CLERK'S COPY. 1111

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 333, 88

THE UNITED STATES, APPELLANT,

vs.

THE CHOCTAW NATION AND THE CHICKASAW NATION.

No. 338. 89

THE WICHITA AND AFFILIATED BANDS OF INDIANS, APPELLANTS,

vs.

THE CHOCTAW NATION, THE CHICKASAW NATION, AND THE UNITED STATES.

No. 339. 90.

THE CHOCTAW NATION AND THE CHICKASAW NATION, APPELLANTS,

vs.

THE UNITED STATES AND THE WICHITA AND AFFILIATED BANDS OF INDIANS.

APPEALS FROM THE COURT OF CLAIMS.

FILED JUNE 26, 1899.

(17451, 17452, 17453.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

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1 In the Court of Claims of the United States.

THE CHOCTAW NATION AND THE CHICKASAW NATION, claimants,
v.
THE UNITED STATES AND THE WICHITA AND AFFILIATED bands of Indians, defendants.
No. 18932.

I. *Petition—Filed March 26, 1895.*

To the honorable the chief justice and the associate justices of the United States Court of Claims:

Your petitioners, the Choctaw Nation and the Chickasaw Nation, in their own behalf and in behalf and for the benefit of certain individuals who are members and citizens of said nations and interested in the subject-matter of this petition, respectfully represent:

First. That this petition is filed, and the jurisdiction of this court invoked, under and by virtue of certain provisions of an act of Congress approved the 2d day of March, 1895, entitled "An act making appropriations for the current and contingent expenses of the Indian
2 Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1896, and for other purposes." These provisions are in the words and figures following, to wit:

"That, as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing agreement, which claim is controverted by the United States, jurisdiction be, and is hereby, conferred upon the Court of Claims to hear and determine the said claim of the Choctaws and Chickasaws and to render judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction; so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations and the Wichita and affiliated bands of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States, and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States: Provided, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: And provided further, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof.

"That said action shall be presented by a single petition, making the United States and the Wichita and affiliated bands of Indians parties defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorney of said nations upon information and belief as to the existence of such facts, and no other statement or verification shall be necessary: Provided, That if said

Choctaw and Chickasaw nations do not bring their action within
3 ninety days from the approval of this act their claim shall be forever barred: And provided further, That it shall be the duty of the Attorney-General of the United States, within ten days after the filing of said petition, to give notice to said Wichitas and affiliated bands, through the agents, delegates, attorneys, or other representatives of said bands, that said bands are made defendants in said suit; of the purpose of said suit; that they are required to make answer to said petition, and that Congress has, in accordance with article five of said agreement, adopted this method of determining their compensation, if any. And the answer of the Wichitas and affiliated bands shall state the facts on which they rely for compensation, and may be verified by their agents, delegates, attorneys, or other representatives, upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: And provided also, That said Wichitas and affiliated bands shall file their answer in said suit within sixty days after they shall receive from the Attorney-General of the United States the notice herein provided for, unless further time is granted by the court, and in the event of failure to answer they may be barred from all claim in the premises aforesaid.

"The said Court of Claims shall receive and consider as evidence in the suit everything which shall be deemed by said court necessary to aid it in determining the questions presented, and tending to shed light on the claim, rights, and equities of the parties litigant, and issue rules on any Department of the Government therefor if necessary.

"It is hereby further provided that said Choctaw and Chickasaw nations may, at any time before the rendition of final judgment in said case by the Court of Claims, negotiate with the commissioners appointed under section sixteen of the act of Congress approved the third day of March, eighteen hundred and ninety-three (Twenty-seventh Statutes, page six hundred and forty-five), or with any successor or successors in said commission, for the settlement of the said matters involved in said suit, and move the suspension of such action until such negotiations shall be accepted or rejected by Congress, such settlement, how-
4 ever, to be made with the concurrence of the Secretary of the Interior and Attorney-General of the United States."

The following additional provisions, material to the present case, are also, in substance, embraced in said act of March 2, 1895, taken along with the provisions of the agreement of June 4, 1891, mentioned therein, and which said act confirms:

(a) Said agreement of June 4, 1891, is, by said act of March 2, 1895, "accepted, ratified, and confirmed," as provided in said act.

(b) There should be allotted to each and every member of the Wichita and affiliated bands of Indians, in the Indian Territory, native and adopted, 160 acres of land, one-half thereof to be allotted in grazing lands; the allotments to be selected within ninety days from the ratification by Congress of said agreement of June 4, 1891; the titles to the land taken under such allotments to be held in trust for 25 years, in the manner and to the extent provided for in the act of Congress approved February 8, 1887. (24 Stats., 388.)

(c) Whenever the lands acquired under said agreement of June 4, 1891, shall by operation of law, or proclamation of the President, be

open to settlement, they shall be disposed of under the general provisions of the homestead and townsite laws of the United States, provided that, in addition to the land-office fees prescribed by the statute, the entrymen shall pay $1.25 an acre for the land entered at the time of submitting final proof; and that all such entries, where the entryman has resided upon and improved the land by him entered, in good faith, for a period of fourteen months, may be commuted to cash upon the payment of $1.25 per acre. Sections 16 and 36 and 13 and 33 in each township shall not be subject to entry, but reserved—sections 16 and 36 for the use of common schools, and sections 13 and 33 for university, agricultural college, normal school, and public buildings of the Territory and future State of Oklahoma.

(d) As fast as the lands open for settlement under the act are sold the money received from such sales shall be deposited in the Treasury, subject to the judgment of the court in the suit provided for in said act, less a reservation of not exceeding $15,000 for a designated purpose.

Second. Claimants further show that the Choctaw and Chickasaw nations are now and ever since and long before the organization of the Government of the United States were and have been Indian tribes, occupying, from time to time, different portions of the territories now embraced within the United States, and have been, by the Government of the United States, since its organization, recognized and dealt with as such Indian tribes according to the policies which the Government has pursued in regard to the rights of such tribes and according to the duties and obligations which the said Government has accorded to the Indians as the aboriginal possessors and inhabitants of the said territories.

Third. Claimants further show that at and prior to the 18th day of October, 1820, the said Choctaw Nation of Indians was the possessor of certain lands east of the Mississippi River in the States of Mississippi and Alabama, which, by the first article of the treaty of October 18, 1820 (7 Stat., 211), between the United States and the said nation, they ceded to the United States. In consideration of said cession, and in part satisfaction therefor, the United States ceded to the Choctaw Nation the tract of country described in the second article of said treaty, including, amongst others, the land hereinafter described, for the interest of the Choctaw and Chickasaw nations in which this action is brought. By the fourth article of said treaty the United States stipulated that the boundaries of said cession to the Choctaws should remain without alteration until the period at which said nation should become so civilized and enlightened as to be made citizens of the United States and that Congress should lay out a limited portion or parcel of such land for the benefit of each family or individual in the nation.

Claimants hereby, by reference thereto, make the provisions of said treaty a part of this petition.

Fourth. Subsequent to said treaty of October 18, 1820, the treaty of the 20th of January, 1825 (7 Stats., 234), was made. By its first article the Choctaw Nation retroceded to the United States so much of the territory ceded to said nation by said treaty of October 18, 1820, as is described in said article, but this retrocession did not embrace any of the land for an interest in which this action is prosecuted.

Claimants, by reference thereto, make the provisions of said first article of the treaty of January 20, 1825, a part hereof.

Fifth. Claimants further say that, on the 27th of September, 1830, a treaty was made and entered into between the United States and the said Choctaw Nation, by the second article of which (7 Stats., 333) it was agreed that the United States should cause to be conveyed to the
7 Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and to their descendants and to inure to them while they should exist as a nation, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork if within the limits of the United States, or to those limits, thence due south to the Red River and down the Red River to the western boundary of the Territory of Arkansas, thence north along that line to the beginning, the boundary of the same to be agreeable to the treaty made and concluded at Washington in the year 1825. In the third article of said treaty the Choctaws cede to the United States the entire country owned by them east of the Mississippi River, the land in controversy in the present case being within the territory so agreed to be ceded to the Choctaw Nation by said treaty of September 27, 1830.

Claimants, by reference thereto, make the provisions of said treaty a part of this petition.

Sixth. Claimants further say that, on the 23d day of March, 1842, a patent was issued by the United States, a copy of which is hereto attached, marked Exhibit A, conveying to the Choctaw Nation the title stipulated for in the second article of said treaty of September 27, 1830, and which patent embraced the land in controversy in the present case.

Seventh. Claimants further show that, by a convention between the Choctaw and Chickasaw nations, dated January 17, 1837, approved
8 by the Senate of the United States on the 25th of February of the same year, and by the President on the 4th of March, 1837, it was agreed that the Chickasaws should have the privilege of forming a district within the limits of the Choctaw country, to be held on the same terms with the Choctaws, except as to the right of disposing of it, &c., to the full provisions of which reference is here made, and the same prayed to be taken and read as a part of this petition. (See 11 Stats., 573.)

Eighth. Claimants further show that on the 22d day of June, 1855, a convention and agreement was made and entered into between the United States and the Choctaw and Chickasaw nations of Indians (11 Stats., 611 et seq.), the parts of which material in the present case being articles 9 and 10, found on page 613 of said volume, and which articles 9 and 10 are as follows:

"ARTICLE 9. The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude; and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein, excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River, but including those bands whose permanent ranges

are south of the Canadian, or between it and the Arkansas, which Indians shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time be prescribed by the President for their government: Provided, however, The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore.

9 "ARTICLE 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct."

The lands in controversy in the present case are embraced within the lands covered by the lease named in the ninth article, above quoted, which last-named treaty is, by reference, made part of this petition.

Ninth. On the 28th day of April, 1866, a treaty was entered into between the United States and the Choctaw and Chickasaw nations of Indians, to which reference is hereby made and the same prayed to be taken and read as a part of this petition. The third article of said treaty is as follows (14 Stats., 769):

"The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98th degree west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States at an interest not less than five per cent, in trust for the said nations until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations,

10 respectively, and also to give to such persons who are residents, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided, and immediately on the enactment of such laws, rules, and regulations the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as, within ninety days before the passage of such laws, rules, and regulations, shall elect to move, and actually remove, from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper, the

United States agreeing, within ninety days from the expiration of said two years, to remove from said nations all such persons of African descent as may be willing to remove, those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars or any part thereof, but shall be upon the same footing as other citizens of the United States in said nations."

The tenth article of said treaty is as follows:

"The United States reaffirms all obligations arising out of treaty stipulations or acts of legislations with regard to the Choctaw and Chickasaw nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations
11 and acts of legislation from and after the close of the fiscal year ending on the thirtieth of June, in the year eighteen hundred and sixty-six."

The forty-fifth article of said treaty is as follows:

"All rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty."

The proportionate interest of the Choctaws and Chickasaws in the lands in controversy in the present case is fixed by the 10th article of the treaty of June 22, 1855 (11 Stats., 613), by the 3d and 37th articles of said treaty of April 28, 1866 (14 Stats., 769), and by the 15th section of the act of March 3, 1891 (26 Stats., 1025), at three-fourths in the Choctaws and one-fourth in the Chickasaws.

Tenth. Claimants further aver and charge, that under and by virtue of the treaties hereinabove set forth, taken and considered together, the claimants have in the premises in controversy in the present case, to wit, in the premises described in the first article of the agreement entered into at Anadarko, in the Indian Territory, on the 4th of June, 1891, by and between David H. Jerome, Alfred Wilson, and Warren G. Sayre, commissioners on the part of the United States and the Wichita and affiliated bands of Indians, as the same is set forth in the said act of Congress approved March 2, 1895, the equitable interest hereinafter stated. The said premises are described in the said first article of the agreement of June 4, 1891, as follows:

12 "Commencing at a point in the middle of the main channel of the Washita River, where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of 98° 40′ west longitude, thence on said line of 98° 40′ due north to the middle of the channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian, thence due south to the place of beginning."

Eleventh. Claimants further aver and charge that their said interest in the premises last above described is the full ownership of the equitable and beneficial interest and title in and to the same in the event contemplated by and provided for in the said act of March 2, 1895, to wit, in the event that the United States shall cease to appropriate and use the same for the purpose of colonizing and settling Indians thereon, as provided in the ninth article of the treaty of June 22, 1855 (11 Stats., 613),

and shall make disposition thereof as a part of the public domain under the homestead laws of the United States, as modified by said act of March 2, 1895, and shall include said lands within and make them subject to the laws of an organized Territory or State of the United States.

Twelfth. Claimants further aver and charge that said lands named in said first article of the agreement of June 4, 1891, above quoted—the same being the lands for their alleged interest in which the above-quoted provisions of said act of March 2, 1895, authorizes claimants to bring suit—are still held by the United States subject to the trust which attached thereto, under the treaties hereinabove set forth, prior to
13 the making and ratification of said treaty of April 28, 1866, and notwithstanding the alleged cession contained in the third article of said last-named treaty (14 Stats., 769).

Thirteenth. Since the said act of March 2, 1895, under the authority of which this suit is brought as aforesaid, requires that this petition "shall set forth all the facts on which the Choctaw and Chickasaw nations claim title to said land," claimants set forth the following facts and considerations in support of their averment that said lands are still held by the United States, in trust for them, notwithstanding the alleged cession contained in article 3 of said treaty of April 28, 1866, and notwithstanding any and all other facts existing:

(a) It is the settled law of the Government of the United States, applicable to the construction of treaties with the Indians, that "the language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import as connected with the tenor of the treaty, they should be considered as used only in the latter sense. * * * How the words of the treaty were understood by this unlettered people rather than their critical meaning should form the rule of construction." (119 U. S., 27–8.)

(b) Applying this rule of interpretation to the language of this third article of the treaty of April 28, 1866, considering it in the light of the other provisions thereof, and of the facts and circumstances which led up to and surrounded the making of said treaty, and also considering it in the light of the subsequent action of the Government of the United States touching the effect of the same, the said language establishes
14 the proposition that this treaty was executed by the Indians with the understanding, and under the assurance from the parties aforesaid who made the treaty on behalf of the United States, that the purchase of this land was made by the United States subject to the trust and for the purpose of setting apart the lands embraced in said cession "for the friendly tribes now in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by the Government, or such as may be fixed by the Government."

(c) One set of circumstances surrounding the making of said treaty is thus disclosed by the annual report of the Commissioner of Indian Affairs of 1864 (p. 33–4), and in which, amongst other things, the Commissioner states the then adopted and settled policy of the United States touching the lands in question, and other Indian lands, as follows:

"Under these circumstances I feel that I can not too strongly urge the importance of preserving the Indian country for the use of the Indians alone, and in all treaties or other arrangements which may hereafter be

made with its former owners insisting upon and, if need be, enforcing such terms as will secure ample homes within that country for all such tribes as, from time to time, it may be found practicable and expedient to remove thereto."

(d) By reference to the next annual report of the Commissioner of Indian Affairs, of 1865, it will be seen that the President appointed a commission comprised of D. N. Cooley, Commissioner of Indian Affairs; Hon. Elijah Sells, superintendent of Southern superintendency; Thomas Wistar, a leading member of the Society of Friends; Brigadier-General W. S. Harney, of the United States Army; and Col. Eli S. Parker, of General Grant's staff, to make treaties between the United States
15 and the Indian tribes that were convened in general council at Fort Smith, Arkansas.

On September 9, 1865, to the tribes then and there represented, including the Creeks, Choctaws, Chickasaws, Cherokees, Seminoles, Osages, Senecas, Shawnees, Quapaws, Wyandottes, Wichitas, and Comanches, the Hon. D. N. Cooley (as disclosed by said annual report of 1865) addressed a speech, and, amongst other things, informed them that the commissioners were empowered to enter into treaties with the several tribes upon the basis of the following propositions:

"1st. That such tribes must enter into a treaty for permanent peace and amity among themselves, with each other as tribes, and with the United States.

"2d. The tribes settled in the Indian Territory to bind themselves, at the call of the United States authorities, to assist in compelling the wild tribes of the plains to keep the peace.

"3d. Slavery to be abolished and measures to be taken to incorporate the slaves into the tribes, with their rights guaranteed.

"4th. A general stipulation as to final abolition of slavery.

"5th. A part of the Indian country to be set apart to be purchased for the use of such Indians from Kansas or elsewhere as the Government may desire to colonize therein.

"6th. That the policy of the Government to unite all the Indian tribes of this region into one consolidated government should be accepted.

"7th. That no white person, except Government employees, or officers or employees of internal improvement companies authorized by the Government, will be permitted to reside in the country, unless incorporated with the several nations."

This report says, in express words, that "with the Choctaws
16 and Chickasaws a treaty was agreed upon on the basis of the seven propositions hereinbefore stated," except that it appears, by a communication from the representatives of the loyal Choctaws—to wit, William S. and Robert B. Patton—that they ask for the following to be substituted in lieu of the 7th proposition of the series above set forth, to wit:

"No white persons, except officers, agents, and employees of the Government, or of any internal improvement companies authorized by the Government of the United States, also no person of African descent, except our former slaves, or other persons of color who are now or have been residents of the Territory, will be permitted to reside in the Territory unless formally incorporated with some tribe according to the usages of the band."

An inspection of the said treaty of 1866 will show that the substance of all these seven propositions was embodied therein, except the fifth, which 5th proposition complainants aver and charge was, on conclusive grounds and reasons, understood by the Choctaw and Chickasaw nations to be, in substance, embodied in said treaty, and was also so understood by the United States commissioners who made it.

(e) Another circumstance showing that the parties to said treaty regarded the said fifth proposition as being substantially embodied therein is thus disclosed: "It is expressly provided in the tenth article of said treaty (above quoted) that all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw nations entered into prior to the late rebellion, and in force at that time, not inconsistent herewith, are reaffirmed," and a like provision is repeated in article 45 of said treaty, declaring that "all rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and
17 the same are hereby, declared to be in full force so far as they are consistent with the provisions of this treaty."

Claimants further aver and charge that there is nothing in the said third article of said treaty, or in any other part thereof, which, construed in the light of all the surrounding facts hereinabove and hereinafter set forth, is inconsistent with the restoration to the Choctaws and Chickasaws of all their rights in the lands in question as they existed prior to the rebellion and under and by virtue of the treaties preceding the treaty of 1866. These provisions, therefore, of said articles 10 and 45 do restore the said Choctaw and Chickasaw nations to their rights as beneficiaries of the trust existing in their favor in the lands in question as these rights and equities existed prior to said rebellion.

Other circumstances showing that it was not the intention of the parties to said treaty, in inserting the said 3rd article thereof, to divest the lands in question of said trust in favor of the claimants are found by contrasting with the consideration of $300,000 which was stipulated to be paid for said cession made in article 3 the dealings of the Government with other Indian tribes, hereinafter stated.

The quantity of land embraced in said cession is 7,713,239 acres. Excluding from this estimate the $800,000 paid for the lease and cession embraced in section 9 of the treaty of June 22, 1855 (and which must be excluded because the $800,000 there provided for was paid for the Choctaw lands extending to the western boundary of the United States from the 100th degree of west longitude, lying between the Red and Canadian rivers, and embracing a strip of country correctly estimated by the United States authorities to contain over 6,500,000 acres, and because the said $800,000 if applied to the said purchase lying west of the 100th meridian would be less than 12 cents per acre),
18 the $300,000 paid for said cession is less than 4 cents an acre. (See report of Acting Commissioner of Indian Affairs R. B. Belt of September 13, 1890.)

And, besides, this said $300,000 was not to be paid to the said Indians, but was to be held in trust for them, subject to the full performance of the conditions set forth in said article 3, hereinabove quoted; and claimants aver that at the time of making said treaty it was foreseen that

the performance of the conditions of said article, in favor of the freedmen of said nation, would cost, and did in fact cost, the Choctaws, upon and after their adoption of said freedmen, more than twice their proportionate share of said amount of $300,000—this by reason of what was required and resulted from satisfying said allotments of forty acres of land to be taken out of the home lands of the Choctaw Nation, and the other obligations resulting from the adoption of said freedmen.

Claimants further show, by way of contrasting article 3 of the said treaty of April 28, 1866 (construed by the present defence to completely cut off all equities and interests of the Choctaws and Chickasaws in the lands embraced by said article), with the dealings of the Government of the United States with other Indians, located in said Indian country, whose conditions and lands were substantially the same as those of the Choctaws and Chickasaws, the following examples of the transactions of the Government with such other tribes regarding their lands:

The treaty of June 14, 1866 (14 Stats., 785), with the Creek Nation of Indians, made only two months later than said treaty of April 28 with the Choctaws and Chickasaws, in the third article thereof, cedes to the United States, at the price of 30 cents per acre, the west half of their entire domain,
estimated to contain 3,250,560 acres of land, the aggregate price
19 paid therefor being $975,168. This price is eight times as great as the price allowed by article 3 of the treaty of April 28, 1866, for the lands of the Choctaws and Chickasaws, even if said $300,000 had been paid free from the conditions and encumbrances above quoted. The lands of the Creeks were adjacent and equivalent in value per acre to the lands ceded by the Choctaws and Chickasaws; and yet this cession by the Creeks, for which 30 cents an acre was allowed and paid, was made expressly in trust to be used as homes for such other civilized Indians as the United States might choose to settle thereon, thus reserving to the Creeks their reversionary and equitable interest in said lands. The United States has fully recognized this equitable interest in the act of Congress of March 1, 1889 (25 Stats., 759), appropriating $2,280,857.10, which was paid to said Creek Nation for its equitable interest in said lands, being at the rate of $1.25 per acre, deducting, however, the payment made in article 3 of the treaty of June 14, 1866, and 20 cents for lands theretofore assigned to and occupied by other Indians.

Again, take the case of the Seminole Indians. It will be seen that by the third article of the treaty of March 21, 1866 (14 Stats., 756), the Seminoles ceded to the United States, "in compliance with the desire of the United States to locate other Indians and freedmen thereon," their entire domain, embracing a tract of land ceded to the Seminoles by the Creeks under the provisions of article 1 of the treaty with the Creeks and Seminoles of August 7, 1856 (11 Stats., 699). This article 3 states the quantity of land ceded to be 2,169,080 acres, and the United States agreed to pay therefor $325,362, or 15 cents an acre, and this although the cession was made subject to the equity in favor of the Seminoles entitling them to the land in the event of its ceasing to be used as aforesaid.
For this equity, so retained by the Seminoles in virtue of said
20 article 3 of the treaty of March 21, 1866, the United States subsequently paid to the Seminoles the sum of $1,912,942.02,

appropriated by the act of March 2, 1889 (25 Stats., 1004), and which price was at the rate of $1.25 per acre, subject to the same deductions as were made in the above-stated case of the Creeks.

Examples might be indefinitely multiplied wherein the Government has recognized its obligation to pay the various Indian tribes for their equities in the lands which have been ceded to the United States for the purpose of occupancy by other Indians, all going to show that where lands were so ceded, and where the United States decided to become the full owner thereof, and to make the same a part of the public domain, subject to disposition as such, there, and in every such case, the United States has purchased the equities of the Indians in such lands at the price of $1.25 an acre. But such examples can not all be here introduced, because it would make this petition too voluminous.

Claimants further aver and charge that, in the 15th section of the act of Congress approved March 3, 1891 (26 Stats., 1025), entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1892, and for other purposes," there is contained a provision in the words and figures following, to wit:

"And the sum of two million nine hundred and ninety-one thousand four hundred and fifty dollars be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated, to pay the Choctaw and Chickasaw nations of Indians for all the right, title, interest, and claim which said nations of Indians may have in and to certain lands now occupied by the Cheyenne and Arapahoe Indians under Executive order; said lands lying south of the Canadian River, and now occupied by the said Cheyenne and Arapahoe Indians; said lands have been
21 ceded in trust by article three of the treaty between the United States and the said Choctaw and Chickasaw nations of Indians, which was concluded April 28, 1866, and proclaimed on the 10th day of August of the same year, and whereof there remains, after deducting allotments as provided by said agreement, a residue ascertained by survey to contain two million three hundred and ninety-three thousand one hundred and sixty acres; three-fourths of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of said Choctaw Nation to receive the same, at such time and in such sums as directed and required by the legislative authority of said Choctaw Nation, and one-fourth of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of said Chickasaw Nation to receive the same at such time and in such sums as directed and required by the legislative authority of said Chickasaw Nation; this appropriation to be immediately available and to become operative upon the execution, by the duly appointed delegates of said respective nations specially authorized thereto by law, of releases and conveyances to the United States of all the right, title, interest, and claim of said respective nations of Indians in and to said land (not including Grier County, which is now in dispute) in manner and form satisfactory to the President of the United States; and said releases and conveyances, when fully executed and delivered, shall operate to extinguish all claim of every kind and character of said Choctaw and Chickasaw nations of Indians in and to the tract of country to which said releases and conveyances shall apply."

Claimants further say that the lands which, by the above-quoted section, are declared to "have been ceded in trust by article 3 of the treaty between the United States and the said Choctaw and Chickasaw nations of Indians," concluded April 28, 1866, include and embrace all of the lands involved in the present suit, as well as all other lands so ceded by article 3 of the treaty of April 28, 1866.

22 Claimants further say that the effect of the contract between the United States and the Choctaw and Chickasaw nations, which led to the enactment of the provision above quoted from said section 15, and to the enacting of said law by Congress, and the effect of the full execution of said agreement, was to impress upon and give to all the lands within said cession, contained in said article 3, the trust character expressly declared by said act of March 3, 1891, and that, did said cession embraced in article 3 not have the said trust character prior to the enactment of said statute of March 3, 1891, the enactment of said section 15, and the execution of the contract which led to said enactment of said section 15, making appropriation to pay for the part of said cession occupied by the Cheyennes and Arapahoes, yet said enactment and the transactions leading thereunto evidenced by said provision above quoted from section 15 do impress upon all the lands embraced in said cession, including the lands involved in this suit, the character of a trust in favor of the claimants, as hereinbefore asserted and set forth, and do give to the claimants the ownership of the equity hereinabove described, and for the value of which this action is prosecuted.

Fourteenth. Claimants further show to the court that ever since the making of said treaty with them of the 28th of April, 1866, the defendant, the Government of the United States, acting by and through its appropriate officers having official charge of the lands in controversy herein, and of the duty of determining what the legal status of said lands was, and of controlling the use, possession, and occupation thereof, and in the exercise of their official control over said lands, has continuously and expressly acknowledged that said lands so in controversy in this suit had not, either owing to the said cession contained in said article

23 3 of the treaty of April 28, 1866, or otherwise, ceased to be Indian trust lands, or had ceased to be subject to the trust created by said article 9 of said treaty of June 22, 1855, or had become lands in the full and absolute ownership of the United States, and, on the contrary thereof, expressly acknowledge in their official dealing with said lands that the same were still trust lands, and as such subject to the equities which entitled claimants to the ownership and value of such lands in the event of the Government deciding to discontinue the occupancy thereof by Indians, this action of the Executive of the Government being here set forth and relied on as tending to give to said article 3 of said treaty of April 28, 1866, the interpretation herein contended for, to wit, that said cession did not cut off or bar said equity of claimants in such land embraced in said cession of said third article.

The following are examples of the said action of said officers of the Government acknowledging and asserting the said continued existence of said trust after the making of said treaty of April 28, 1866, in favor of claimants in said lands in controversy in the present case:

(a) The Secretary of the Interior, Hon. Carl Schurz, in a letter to the Secretary of War, dated May 1, 1879, speaking of the lands embraced in

said third article of the treaty of April 28, 1866, says that said last-named treaty "substituted a direct purchase for the lease" made by article 9 of said treaty of June 22, 1855, "but did not extinguish or alter the trust," this being written by the Secretary in reply to an inquiry from the Secretary of War as to the right of the Government to expel from said lands intruders by military force under the laws regulating the care of Indian country as provided in section 2147 of the Revised Statutes, the decision of the Secretary being that said lands were still Indian country and subject to said trust in favor of the Indians and so
24 advised the Secretary of War, and, based on said advice, the President of the United States, on the 12th of February, 1880, issued the proclamation found in volume 21 of the U. S. Statutes at Large, pp. 798, 799, commanding intruders in said Indian country to depart, etc.

(b) The Senate of the United States, on the 7th of February, 1882, called upon the Interior Department for information in reference to the right of occupation by settlers of any portion of the Indian Territory. In answer to that inquiry, on April 25, 1881, C. W. Holcomb, Acting Commissioner of Indian Affairs, to the Secretary of the Interior, S. J. Kirkwood, made the report which was transmitted to the Senate and is found in Sen. Ex. Doc. 111, 47 Cong., 1st sess., in which report, amongst other things, the Acting Commissioner says:

"The Choctaw and Chickasaw cession of April 28, 1866 (14 Stats., 769), was, by the tenth section thereof, made subject to the conditions of the compact of June 22, 1855 (11 Stats., 613), by the ninth article of which it is stipulated that the land should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon."

On the fourth page of said document is the following additional statement by the Acting Commissioner touching the status, amongst others, of the lands in controversy in this case:

"The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to a specific trust, and it is not within the lawful power of either the legislative or executive departments of the Government to annihilate such trust or to avoid the obligations arising thereunder."

Claimants, by reference thereto, make said report (Ex. Doc. 111) a part of this petition.

25 (c) On the 23d of January, 1884, the Senate passed a resolution asking the Secretary of the Interior to advise the Senate of the "present status of lands in the Indian Territory" (all lands in the Indian Territory). In reply to this inquiry, on February 14, 1884, Secretary Teller states as follows:

"These lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, to be held for Indian purposes and, to some extent, for the settlement of the former slaves of some of said nations or portions thereof. Such are the purposes for which said lands are now being used or held, according to the common understanding of the objects of the treaties by which they were acquired, and from these arise the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise." (See Sen. Ex. Doc. 109, 48th Cong., 1st ses.)

(d) In a letter to the Secretary of the Interior by Hiram Price, Commissioner of Indian Affairs, dated January 31, 1884, touching, amongst others, the lands in controversy in this case, the Commissioner sets forth the disposition that had been made of the lands ceded by the Choctaws and Chickasaws by the third article of said treaty of April 28, 1866, and shows that they were, like all other lands ceded by the various Indian tribes in 1866 to the United States for the purpose of settling Indians thereon, appropriated to the settlement of various Indian tribes, just as claimants insist was the purpose of said cession in said article 3, and the various tracts are specifically designated, and shows that all of said leased district embraced in said cession in said third article was so assigned to the settlement of Indians, except Greer County, which was not so appropriated, because claimed by Texas. He concludes the said letter in the following words:

26 "This being the condition of things, it is clear that no authorized settlement could be made by any persons in the Territory, except under the provisions of the intercourse laws, such persons having first obtained the permission provided for in those statutes. It may be further stated that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty or by reservations for tribes thereon under Executive order, except that portion still claimed by the State of Texas and lying between the Red River and the North fork of the same."

(e) In a letter by R. V. Belt, Acting Commissioner of Indian Affairs, to the Secretary of the Interior, and which was written in answer to a communication from the Hon. S. W. Peel, on behalf of the Committee on Indian Affairs of the House of Representatives, asking the views of said Commissioner in regard to the sale and relinquishment by the Choctaws and Chickasaws of their lands west of the 98th degree of west longitude, embracing the lands in controversy in the present case, said information being asked for by said House committee for the purpose of throwing light on the propriety of enacting into law a bill then pending before the House, being House bill No. 12106, 51st Congress, 1st session, entitled "A bill to fully execute article 3 of the treaty between the United States and the Choctaw and Chickasaw nations of Indians, concluded on the 28th day of April, 1866," the said Commissioner fully considers and presents the documents and authorities throwing light on the question whether said trust in favor of claimants still exists or whether it was extinguished by said article 3 of said treaty of April 28, 1866.

In this report by the said Acting Commissioner, he, amongst other things, presents a statement of the utterances of the officers of the Government regarding the status of said lands here in controversy. In that report the said Acting Commissioner, in view of all the facts

27 and considerations gone over therein, reaches the conclusion which he expresses in the following words:

"I am inclined, therefore, to the opinion that the Choctaw and Chickasaw Indians have good ground for the claim that the United States took the lands ceded by them upon the trust to settle other Indians and freedmen thereon, as the policy upon which the negotiations were made clearly indicated its desire and purpose to do."

ifteenth. Claimants further show to the court that in making said ty of the 28th of April, 1866, and especially in agreeing to said article ereof, the Choctaw and Chickasaw nations, and their representatives negotiated the said treaty, were moved, influenced, and induced, in rge degree, to make said treaty and said third article thereof by the rances held out to them and their said representatives by the com- sioners of the United States, authorized and sent to negotiate the said ty, that the propositions hereinbefore set forth, including said fifth position, asserting that part of the Indian country was to be set apart he purchase for the use of such Indians from Kansas or elsewhere as Government might desire to colonize therein, and especially by the ress to the representatives of the Choctaw and Chickasaw nations, other tribes, made by the hon. president of said commission, D. N. ley, on the 9th of September, 1865, at the convention at Fort Smith, which he reasserted to said representatives of the Indian tribes that h treaties must contain substantially, amongst others, the said fifth position reported in the official proceedings of said meeting in the following words:

"A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes now in Kansas and else- ere, on such terms as may be agreed upon by the parties and approved the Government or such as may be fixed by the Government."

In this address of the president of said commission, as appears by the cial minutes of said meeting of September 9, 1865, he "then stated t the agents will be supplied with printed copies of the address, and requested to go with an interpreter to their respective tribes for the rpose of fully explaining what is said there," which advice was lowed.

Claimants further show to the court that many other like assurances re, by said officers and agents of the United States and the commis- ners authorized to make said treaties, held out from time to time to claimants and their representatives engaged in considering and mak- said treaty, of like character with the assurances and statements ntained in said address of the 9th of September, 1865, some of which hereinabove specifically set forth.

Claimants further show that the said treaty of the 28th of April, 1866, cluding the third article thereof, was agreed to on the part of the Choc- w and Chickasaw nations, and their representatives, on the faith of the surances so held out to them by the said commissioners of the United ates to the effect that said lands were being acquired by the United ates for the special and specific purpose of settling Indians thereon, d upon no other trust or purpose, and that said cession in article 3 was bject to the said trust and condition, and subject to the reservation and uity in favor of claimants that if said lands embraced by said cession should cease to be occupied by Indian tribes and become divested of said trust and part of the absolute public domain of the United States, open to occupation and entry under the land laws thereof, otherwise devoted to purposes not expressed or contemplated by said fth proposition, then the equity of the claimants, the Choctaw and hickasaw Nations, should attach and inure to them in immediate right nd possession, as such equity is hereinabove set forth; and but for their

faith and trust in said representations, so made by the commissioners of the United States, and their confidence that said treaty of the 28th of April, 1866, would, and in substance did, embody the said provisions establishing and securing to claimants the said equity in said lands, the Choctaw and Chickasaw nations would not have assented to or made said treaty; and claimants have, during the years which have elapsed since said treaty was made, failed to make any effectual objections to said treaty, because of their then and continuing belief that said equity was in substance secured to the claimants by the provisions of said treaty as made, and further by reason of their reliance on the truth of the assurances by the Government of the United States, some of which are hereinabove set forth, that such was the intent and effect of said treaty.

Claimants further aver and charge that to now repudiate said equity and trust in favor of claimants on the faith of which said treaty was made as aforesaid would be most unjust to claimants and would operate, though not so intended, as a fraud against the claimants, and would be against justice and equity.

Sixteenth. Claimants further show to the court that the practical construction given to the provisions of said treaty at the time of its being negotiated for, at the time of its actual negotiation, and ever since its ratification by Congress and by the commissioners, officers, and
30 agents of the United States whose duties connected them with said negotiations, with the making of said treaty, and with the interpretation and execution of the provisions thereof, has at all times been an interpretation which gave and secured to claimants, the said Choctaw and Chickasaw nations, the rights and equities in said lands embraced in said article 3 of said treaty of the 28th of April, 1866, some examples of which practical construction and interpretation are hereinabove set forth.

Now, to depart from and ignore that interpretation, on the faith of which, as aforesaid, said treaty was assented to by the Choctaw and Chickasaw nations, and to adopt an opposite construction, cutting off claimants from all equities and interest in said lands, would not only operate as a great wrong against the claimants, but would also be to disregard that settled rule for interpreting treaties, statutes, and other provisions of law which ordain that "the construction given to a statute by those charged with the duty of executing it ought not to be overruled without cogent reasons." (113 U. S., 571, and cases there cited.)

Seventeenth. Claimants further show to the court that for the Government of the United States, without the consent of the Choctaw and Chickasaw nations, to cut off and debar said nations from their equities that would arise, in immediate possessory right, to such nations at and upon the accomplishment of the disposition of said lands involved in this controversy, which is provided for and contemplated by said act of the 2d of March, 1895, would not only be a most injurious and flagrant violation of the property and treaty rights of the claimants in regard to said equities herein asserted by them, but such appropriation of said lands to the public domain and the disposition thereof under the
31 homestead and other laws of the United States would be a palpable and most injurious violation of other treaty obligations existing in favor of the Choctaw and Chickasaw nations under and in virtue of the provisions of said treaty of April 28, 1866.

ne of the provisions of a treaty which would be violated by dispos-
of the lands in controversy as part of the public domain, provided
nants are indeed entitled to the equities which they hereinbefore set
nd assert, is found in article 43 of said treaty of the 28th of April,
, which stipulates that no white person shall be permitted to go into
Territory unless incorporated in one or the other of the said claimant
ns, with the exception of officers, agents, and employees of the
ernment and of any internal improvement company, or persons trav-
g through or temporarily sojourning in said nations, or either of
n.

ighteenth. Claimants further show to the court, in the alternative,
if the court should find and hold said article 3 of said treaty of the
of April, 1866, does make and constitute an absolute conveyance of
itle in and to the lands in controversy herein, divested of all equities
trusts in favor of claimants, and this court should reach that con-
on notwithstanding all the facts herein set forth, then still these
nants are entitled to the decree of this court securing to them all
ights and equities hereinabove claimed and set forth, notwithstand-
he said effect of said cession of said third article of said treaty of
28, 1866. Because the claimants say that if such is the effect of
article 3 as the same now stands, then the fact that said article omits
to set forth and state the said trust and equity expressed in said
proposition 5 hereinabove set forth, and omits to reserve and
secure to these claimants the right and equity of the ownership
id land which it was the design of claimants and of the Government
e United States to secure to these claimants in the event that said
should cease to be used for the settlement of Indians, and should
sposed of as is provided in said act of Congress of the 2d of March,
, is due to mistake and inadvertence on the part of the commission-
nd officers of the Government of the United States who procured
making of the said treaty of April 28th, and of said third article
of, and who drew the same for execution, in omitting to insert the
provisions which reserved and secured to claimants the interest,
and equity hereinabove set forth, as promised to be reserved and
ed by the commissioners who negotiated the same, and to the mis-
and inadvertence of the representatives of the claimants in assent-
o and executing the said treaty omitting said reservation of said
y in favor of claimants.

e facts going to show that said omission of said clause, proposition
ve named, was the result of mistake on the part both of the officials
e Government of the United States who negotiated for, drew, and
red the execution of said treaty, and also of the Choctaw and
asaw nations and their commissioners and agents who conducted
egotiations for the making of said treaty, and who procured the
tion thereof on behalf of the Choctaw and Chickasaw nations, are
me facts which are hereinabove set forth going to show—

That it was expressly agreed and asserted that said proposition 5
l be inserted in all the treaties then being negotiated; (b) the agree-
of the said Choctaws and Chickasaws that the provisions of said
propositions should be inserted in all the treaties then being

33 negotiated, including that with the Choctaws and Chickasaws, with the exception of the above-named modification of proposition 7; (c) that the Commissioner of Indian Affairs, before said treaty was concluded, reported that substantially such provision should be inserted in said treaty as is hereinabove quoted from his annual report of 1864; (d) that the said Commissioner in his annual report of 1865 repeated that "with the Choctaws and Chickasaws a treaty was agreed upon upon the basis of the seven propositions heretofore stated;" (e) the fact that said proposition 5 was in substance inserted in the other treaties being negotiated for at said convention at Fort Smith, Arkansas, held in September, 1865, along with the said treaty of the 28th of April, 1866, and which were negotiated under conditions substantially the same as that negotiated with the Choctaws and Chickasaws; (f) the inequity and injustice that would be involved in making said article 3 extinguish all equities of the claimant nations in the lands embraced in said article upon and for the considerations expressed in said article, whilst to the other tribes then being negotiated with, and from whom the Government did not withhold their equities in lands embraced in their respective treaties of the year 1866, but, on the contrary, have purchased and paid therefor as hereinabove set forth, and all the other facts hereinbefore set forth.

Claimants therefore aver and charge that if said article 3 as it stands does extinguish said equities of claimants, then the said provisions of said article ought, in justice and equity, to be by this court so reformed as that it will not extinguish said rights and equities of the claimants in and to the lands here in controversy and the other lands embraced in the cession of said article 3.

34 Nineteenth. Claimants further show to the court that the affiliated bands of Indians who are named in the above-quoted provision of the act of March 2, 1895, are fractions or parts of certain ancient tribes of Indians, as claimants are informed and believe, and therefore aver, to wit, of Delawares, Caddoes, Keechies, Towaconies, and Wacoes.

The words "affiliated bands," as employed in said last-named act of Congress, may take in fractions of other tribes, but as to this claimants are not informed and cannot aver.

Claimants further show to the court that the Wichita and affiliated bands of Indians named in the above-quoted provision of said act of March 2, 1895, and who are, by said act, required to be made defendants herein, will have, after the lands here in controversy are disposed of as provided in said last-named act under the homestead laws of the United States as modified by said last-named act, no right to or interest in the proceeds of the disposition and sale of said lands, and which proceeds are required by said act of the 2d of March, 1895, to be deposited in the Treasury subject to the judgment of the Court of Claims in the suit therein provided for, but the whole of said money so deposited will be the property of claimants in virtue of all the premises herein set forth, and especially in virtue of the fact that the treaties herein set forth conveyed and secured to the Choctaw and Chickasaw nations the ownership of the lands here in controversy as between the United States and the said Choctaw and Chickasaw nations, and also as between the last-named two nations and the Wichita and affiliated bands of Indians and all other Indians or Indian tribes.

Claimants further show, aver, and charge that, as between the United States and them, it was, by reason of treaty obligations isting between the United States and claimants, and herein set forth, yond the competency of the United States, as against the grants d provisions of said treaties above named of the 18th of October, 20 (7 Stats., 211), of the 20th of January, 1825 (7 Stats., 234), of e 27th of September, 1830 (7 Stats., 333), of the said patent of the d of March, 1842 (see Exhibit A), of the 17th of January, 1837 (11 ats., 573), of the treaty of the 22d of June, 1855 (11 Stats., 611), and id treaty of the 28th of April, 1866 (14 Stats., 769), to grant unto the ichitas and affiliated bands any title or interest in the lands in con- oversy, or in the proceeds thereof, except the right of occupancy d possession contemplated and secured by the said fifth proposition greed, at the negotiation of the last-named treaty, to be inserted in such eaty, and which right of possession and occupancy and of all interest, any Indian tribes, bands, or persons, in said lands, and in the pro- eds thereof, became and were absolutely terminated upon the termina- on of the occupancy of said lands by any Indian tribe, band, or person ho might, by the United States, be colonized or settled upon said lands nder the reserved rights named in said fifth proposition hereinabove t forth; and therefore, and by reason of the premises aforesaid, all the ghts of the said Wichitas and affiliated bands in said lands and their oceeds were and are cut off and terminated by and upon the occurrence the disposition of said lands under the homestead laws as provided in e said act of March 2, 1895, and all interest of said Wichitas and filiated bands in the moneys arising from said sale thereof are absolutely and forever extinguished.

Claimants further aver and show to the court that if the United States have come under any obligations, by contract, treaty, or herwise, with said defendants, the Wichitas and affiliated bands, whereby id last-named tribe and bands will be entitled to any compensation or quities, owing to their being deprived of the possession of said lands re in controversy, or of any or all of the moneys arising from the sales ereof, then such claim of the Wichitas and affiliated bands inure to them against the United States and are so held, and are not held gainst these claimants, or against the moneys required by said act of larch 2, 1895, to be deposited in the Treasury.

Claimants further aver and charge that the said claimant nations are ntitled, as against the said Wichita and affiliated bands, to be compen- ated for the value of the lands which by said act of the 2d of March, 895, are to be allotted to the members of the Wichita and said affiliated ands, and also as against the United States, and are further entitled, as gainst the United States, for the value of all lands reserved from the nds here in controversy by said act of March 2, 1895, for the use of ommon schools, university, agricultural college, normal school, and pub- c buildings of the Territory and future State of Oklahoma, and that he provisions of the act of Congress under which this suit is brought re such as to entitle this court as a court of equity to ascertain the uantity and the value of the said lands so allotted and reserved, and to ive to these claimants a decree for the said value of said allotted and eserved lands as well as for said proceeds of the sale of lands required y said act to be deposited in the Treasury.

PRAYER.

Wherefore, all the premises aforesaid considered, the Choctaw and Chickasaw nations pray as follows:

37 1. That proper process and notice be given, as provided by said act of March 2, 1895, to the defendants herein, to wit, to the United States and to the Wichita and affiliated bands of Indians, which are hereinabove named and set forth, and who are made defendants herein, notifying them to make answer hereto as provided by said act of March 2, 1895.

2. That the court will pass its decree in favor of these claimants decreeing that they are in law and equity entitled to the proceeds of the sale of all lands here in controversy as to which proceeds it is provided in the said act that the same shall be deposited in the Treasury subject to the judgment of the court in this suit, and also are entitled to the just and full value of all lands which shall be allotted and reserved under the provisions of the said act and of the agreement which by said act is accepted, ratified, and confirmed, as therein provided, as such value shall be ascertained under an accounting made under the order and direction of this court.

3. That this court will from time to time, as said sales are made, and the proceeds thereof deposited in the Treasury, as provided by said act, pass its order and decree directing the payment out of said proceeds so deposited to the Choctaw Nation three-fourths of said proceeds of sale so deposited, and to the Chickasaw Nation the other one-fourth.

4. That when the quantity and value of said lands to be allotted as aforesaid to the members of the Wichita and affiliated bands and reserved for school and other purposes, as hereinbefore set forth, are ascertained and determined, the court will decree the claimants aforesaid in said proportions of three-fourths to the Choctaws and one-fourth to the Chickasaws, of the entire value of said lands so allotted to said several and respective members of the Wichita and affiliated bands and reserved for school and other purposes.

38 5. And for all such other and further relief as may be demanded by justice and equity, including the reform of the terms of said article 3 of said treaty of the 28th of April, 1866, provided the court shall find that these claimants are not entitled to the rights and equities herein prayed for in the absence of such reform by the decree of this court.

THE CHOCTAW AND CHICKASAW NATIONS,
By JAMES G. STANDLEY,
Delegate Choctaw Nation.

J. H. McGOWAN,
Att'y of Chickasaw Nation,
629 F Street N. W., Washington, D. C.

SAM'L SHELLABARGER and
J. M. WILSON,
SHELLABARGER & WILSON,
Of Counsel for Choctaws,
No. 1416 F Street N. W., Washington, D. C.
ROB'T L. OWEN.

DISTRICT OF COLUMBIA, *ss:*

Before me, the undersigned, a notary public in and for the District aforesaid, personally appeared James S. Standley, the delegate and agent of the claimant the Choctaw Nation for the purpose of conducting and transacting the business of said nation in the city of Washington and elsewhere relating, amongst other things, to all the matters and premises set forth in the above and foregoing petition, who, being duly sworn, on solemn oath says:

1. That no assignment or transfer of the claims set forth in the foregoing petition, or any part thereof, or any interest therein, has been made by the claimant the Choctaw Nation, except the assignment set forth in the foregoing petition to the Chickasaw Nation.

39 2. That the claimant the Choctaw Nation is justly entitled, as herein shown and set forth, to the rights, equities, property, and moneys set forth and claimed in the said foregoing petition against the defendants, the Wichita and affiliated bands of Indians, and also against the United States, after allowing all just credits and set-offs.

3. That affiant has fully read and knows the contents of the foregoing bill in equity and petition; that all the matters and things therein set forth as matters known to affiant of his own knowledge are true in substance and in fact, and that all the other matters therein set forth as upon information and belief he believes to be true.

JAMES S. STANDLEY.

Subscribed and sworn to before me this 21st day of March, A. D. 1895.

[SEAL.] EDMUND VANDYKE,
Notary Public.

DISTRICT OF COLUMBIA, *ss:*

At the same time and place personally appeared Jonas H. McGowan, who, being duly sworn, deposes and says that he is an attorney for the Chickasaw Nation, one of the parties complainant in the above petition, and that he has duly read the same, and that the same is true upon his information and belief; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made by the claimant, the Chickasaw Nation; that the claimant the Chickasaw Nation is justly entitled, as herein shown and set forth, to the rights, equities, property, and moneys set forth and claimed in the foregoing petition against the defendants, the Wichita and affiliated bands of Indians and the United States, after allowing all just credits and set-offs.

JONAS H. MCGOWAN.

40 Subscribed and sworn to before me this 21st day of March, A. D. 1895.

[SEAL.] EDWARD VANDYKE,
Notary Public.

EXHIBIT A.

[Copy.]

The United States of America, to all to whom these presents shall come, greeting:

Whereas, by the second article of the treaty began and held at Dancing Rabbit Creek on the fifteenth day of September, in the year of our

Lord one thousand eight hundred and thirty (as ratified by the Senate of the United States on the 24th day of February, 1831), by the commissioners on the part of the United States, and the Mingoes, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that "the United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation" a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation, and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning, the boundary of the same to be agreeably to the treaty made and concluded at Washington city in the year 1825:

Now, know ye that the United States of America, in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents
41 do give and grant, unto the said Choctaw Nation the aforesaid "tract of country west of the Mississippi;" to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, as intended "to be conveyed" by the aforesaid article, "in fee simple to them and their descendants, to inure to them, while they shall exist as a nation and live on it," liable to no transfer or alienation, except to the United States, or with their consent.

In testimony whereof I, John Tyler, President of the United States of America, have caused these letters to be made patent, and seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-two, and of the Independence of the United States the sixty-sixth.

By the President:

JOHN TYLER.
DAN'L WEBSTER,
Secretary of State.
JOHN C. SPENCER,
Secretary of War.
T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Recorded, volume 1, page 43.

J. WILLIAMSON,
Recorder of the General Land Office.

Executed in the Bureau of Topographical Engineers.

JOHN J. ALBERT,
Col., Corps T. Engineers.

Returned to the War Department for the Choctaw Nation, March 24, 1842.

[L. S.]

E. M. HUNTINGTON,
Commissioner of the General Land Office.

42 In the Court of Claims of the United States.

THE CHOCTAW NATION AND THE Chickasaw Nation, claimants,
vs.
THE UNITED STATES AND THE Wichita and Affiliated Bands of Indians, defendants.

No. 18932.

II. *Answer of defendant Indians.—Filed August 14, 1895.*

The answer of the defendants, the Wichita and Affiliated Bands of Indians, to the petition of the claimants, respectfully represents:

First. They admit the allegations in the first paragraph of the claimants' petition contained.

Second. They neither admit nor deny the allegations of the second paragraph thereof.

Third. They neither admit nor deny the allegations of the third paragraph of the petition so far as they refer to the possession of certain lands east of the Mississippi River and the cession thereof; they admit that the United States, by the treaty of October 18, 1820, recited in the said paragraph, attempted to cede to the Choctaw Nation certain lands, among which are the lands at issue in this cause.

But they deny that the United States did legally so cede the
43 said lands to the said Choctaw Nation, for the reason, as these defendants aver, that the United States possessed no title to the same, the aboriginal title of these defendants therein not having been extinguished at the time of such attempted cession.

They aver that the said lands as far west as the limits of the United States were ceded to the United States in the year 1803 by France, being a portion of the Territory of Louisiana, said cession being subject to the possessory rights of the aboriginal tribes; that by a treaty entered into between the United States and the Quapaw tribe of Indians, which treaty was proclaimed July 5, 1818 (7 Stat. L., p. 176), and by reference thereto is made a part of this answer, the said Quapaw tribe of Indians attempted to cede to the United States certain lands, among which are those contained in the subsequent alleged cession to the Choctaw Nation, which lands are described in the second article of the said Quapaw treaty, as follows:

"Beginning at the mouth of the Arkansaw River, thence up the Arkansaw to the Canadian Fork, and up the Canadian Fork to its source; thence south to the Big Red River, and down the middle of that river to the Big Raft; thence a direct line so as to strike the Mississippi River thirty leagues in a straight line below the mouth of the Arkansaw."

All of that portion of the Quapaw cession lying west of the western boundary of the now State of Arkansas composed the attempted cession to the Choctaw Nation.

But these defendants deny that the said Quapaw tribe possessed, or that the United States received from it, any title to the lands west of the extreme eastern portion of what is now the Indian Territory, the said Quapaw Indians never having occupied the said lands, nor had they any

possessory right thereto, being settlers of comparatively recent date upon the portion of the said cession contained in the present State of Arkansas, whither they had come from their former habitat east of the Mississippi River.[1]

44 These defendants, therefore, deny that the United States ever legally ceded to the claimants herein, or either of them, or to any person or persons whomsoever, the lands which are the subject of this action, or any part thereof or interest therein, or ever so ceded any of the lands occupied by these defendants under their aboriginal right of occupancy, as hereinafter more fully set forth.

The said Quapaw Indians retained, in the aforesaid treaty, certain lands for their own occupancy, which they thereafter ceded to the United States by a treaty proclaimed February 18, 1825, which by reference is made a part of this answer. (7 Stat. L., 232.) In the fourth article of this second Quapaw treaty it is provided that "the Quapaw tribe of Indians will hereafter be concentrated and confined to the district inhabited by the Caddo Indians, and form a part of said tribe." And defendants aver that the said Caddo Indians are the same as the Caddo Indians, the defendants herein. The above provision was rescinded by a treaty with the Quapaws proclaimed April 12, 1834, and made a part of this answer by reference thereto (7 Stat. L., 424), the Quapaws being settled in the Indian Territory.

Fourth, fifth, sixth, and seventh. They admit the execution of the treaties recited in the fourth and fifth paragraphs of petition, the patent recited in the sixth paragraph, and the convention recited in the seventh paragraph, but subject to the same exceptions as to the title conveyed thereby as are set forth in the third paragraph of this their answer; and deny that the aboriginal possessory right of these defendants was affected thereby. These defendants aver that the United States derived its authority to agree to convey, and to actually convey, the lands

45 attempted to be conveyed by patent as set forth in the 5th and 6th paragraphs of claimants' petition under and by virtue of the act of Congress approved May 28, 1830, being "An act to provide for an exchange of lands with the Indians residing in any of the States or Territories and for their removal west of the river Mississippi" (4 Stat. L., 411), whereby it was provided as follows:

"SECTION 1. That it shall and may be lawful for the President of the United States to cause so much of any Territory belonging to the United States west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks as to be easily distinguished from any other.

* * * * * * *

"SEC. 3. That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them and their heirs or successors, the country

[1] "Dictionary of Indian Tribes" in manuscript, Bureau of American Ethnology; Caption: Siouan Family, Quapaw Tribe.

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so exchanged with them; and if they prefer it that the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

They further charge and aver that no authority of law existed for the conveyance, by patent or otherwise, of the lands attempted to be conveyed to cla'mants, as set forth in the sixth paragraph of claimants' petition, whereof the Indian title had not been extinguished, and that in truth and in fact the title of these defendants to the lands at issue in this suit had not been extinguished by the United States when said attempted conveyance was made, and that the same is and was void as against these defendants.

Eighth. They admit the allegations in the eighth paragraph of the petition contained so far as to admit the execution of the agreement set forth in the said paragraph, but deny that the legal force and effect of the said agreement in any manner impairs the rights of these defendents; and they aver that the lands thereby leased to the United States
46 were intended for the occupancy of these defendants, and of them alone. Denying that any legal right on the part of the United States to contract with the claimants existed at the date of said agreement respecting the lands, the subject-matter of this suit, and denying any and all right of the claimants to the said lands, these defendants allege that, even under the terms of the agreement of June 22, 1855, referred to, the leasing of said lands for a permanent settlement of these defendants did not contemplate the after removal or separation of these defendants from the lands assigned to them west of the 98th degree of longitude, or any portion thereof, or a separation of interest in the proceeds of the sale or disposition of the whole or part of said lands, and so far as these defendants were affected by the terms of said agreement, to which they were not a party directly or indirectly, and to which their consent was never requested or obtained, the permanent settlement of these defendants by the United States gave to these defendants, and it was so intended thereby to give to these defendants, a permanent right in and to the lands upon which they were so permanently settled, and the allotment of a portion of said lands in severalty to these defendants and their consent to hold said allotment to carry out a settled policy of the United States respecting Indians, is in no degree an abandonment of the right of these defendants, in their tribal capacity, to the proceeds of the sale of the unallotted portion of said lands if the same shall be sold, or the enjoyment in common of the same if they shall remain undisposed of. Defendants further answer and aver that while at the time of the said agreement between the United States and the Choctaw and Chickasaw Indians, the needs of these defendants may have been supplied by their location on lands the subject of that agreement, and they, therefore, accepted the same, these defendants did not then understand that
47 they were being settled on lands that had been leased for their occupancy, but, on the contrary, they believed that they were being given a permanent home upon lands whereof they had always enjoyed a possessory right, subject only to the paramount title of the United States.

Ninth. They admit the execution of the treaty set forth in ninth paragraph of the petition that the paramount title to all lands held by Indian tribes is in the United States, the Indians possessing only the right of occupancy, but they aver that by the said treaty the Choctaw and Chickasaw nations ceded and surrendered to the United States all their right and title in said lands, either legal or equitable, if any they ever had, which these defendants deny. They further aver that the unconditional retrocession by the claimants to the United States of all the territory west of the 98th degree of west longitude, as provided for in the 3d article of the treaty of April 28, 1866, between the Choctaw and Chickasaw nations of Indians and the United States (14 Stat. L., 769) was essential to correct the error into which the United States had fallen in, theretofore attempting to convey to claimants the lands involved in this suit, along with other lands to which defendants had also the right of occupancy, which attempted conveyance was made in violation of law and the rights of these defendants.

Tenth. They admit the accuracy of the description of the lands set forth in the tenth paragraph of the petition, as the lands at issue in this cause, but deny, as before, that the claimants have any interest, either legal or equitable, therein.

Eleventh and twelfth. They deny the allegations in the eleventh
48 and twelfth paragraphs of the bill contained. They deny that the interest of claimants in and to said land and premises is the full ownership of the equitable beneficial interest and title in and to the same in the event contemplated by and provided for in the act of March 2, 1895, referred to in claimants' petition; they deny that the allotment of lands in severalty to these defendants and the application of the proceeds derived from the sale of unallotted lands is, in fact, a ceasing to appropriate said lands to the colonizing of Indians thereon, and, on the contrary, aver that the application of the proceeds of the sale of said unalloted lands to these defendants is essential to the full enjoyment by these defendants of the lands on which they have heretofore been permanently settled, and deny that said lands are still held by the United States, subject to the trust set up in the twelfth paragraph of claimants' petition, or subject to any trust of any name or nature, except as the same are held in trust for these defendants.

Thirteenth. Answering the thirteenth paragraph of the petition, these defendants deny that any action of their codefendant, the United States, in relation to the lands of the Creeks or Seminoles or any other tribe of Indians, can be legally or equitably binding on these defendants; nor can any such action respecting the lands in the so-called leased district formerly held as a reservation for the Cheyennes and Arapahoes. And in connection with these last-named lands these defendants aver that the said tribes were located thereon in defiance of the understanding had between these defendants and the United States, at the council held at Fort Arbuckle, in 1859, hereinafter set forth, and of the treaty of 1855, between the United States and the claimants herein, whereby the tribes ranging north of the Arkansas River were expressly excluded from set-
tlement thereon; wherefore these defendants aver that the acknowl-
49 edgment of an interest in the Choctaws and Chickasaws as against tribes not having a shadow of interest can not be argued to the

detriment of these defendants, who are not in like case; and these defendants deny that the treaty of April 28, 1866, by the terms whereof the land involved in this suit was ceded to the United States by the claimants herein, was executed by the said claimants or by the United States, in the understanding and under the assurance from the United States that the purchase by the United States of the rights of claimants in the lands involved in this suit was made subject to the trust and for the purpose of setting apart the lands embraced in said cession for the friendly tribes then in Kansas and elsewhere, on such terms as may be agreed upon by the Government or such as may be fixed by the Government, except in so far as by the language used in said treaty it was announced as the policy of the Government and so understood by the claimants to cancel any shadow of title of the claimants in and to said lands that the same might be employed fully and wholly by these defendants and other friendly tribes of Indians to whom the Government had theretofore, or subsequently might, rightfully grant it, after extinguishing the Indian title as required by law. These defendants further deny that any settled Executive policy of the United States has recognized a legal or equitable right of claimants in and to the lands involved in this suit since the treaty of 1866, by which the claimants retroceded the same to the United States; and these defendants allege that any Executive action which may be construed into a recognition of a legal or equitable right of claimants in and to said lands, since the date of said treaty of 1866, if any such in fact exists, was without authority of law and resulted from error on the part of the Executive Office so recognizing the same. Defendants deny that it was or is the intent or meaning of said treaty of
50 1866 to restore to the Choctaw and Chickasaw nations any alleged right they may have once erroneously acquired from the United States in and to said lands; and these defendants charge and aver that it was the intent of the parties to said treaty of 1866 to wholly divest the claimants of any and all shadow of right in and to the said lands by them retroceded to the United States. And respecting any legislative action by the Congress of the United States which may be attempted to be construed into a recognition of a right, legal or equitable, of claimants in and to said lands, these defendants aver that any and all such action has been taken under a misapprehension of the facts and environments of the claimants herein with relation to said lands and the retrocession thereof, and resulted, in truth and in fact, in the concession of a gratuity to said claimants on the part of the Congress of the United States given for reasons unknown to these defendants, if not erroneously through a want of knowledge of the limitations to claimants' rights in the premises as hereinbefore alleged.

And in relation to the payment for the alleged interests of the Choctaw and Chickasaw nations in the Cheyenne and Arapahoe Reservation, these defendants, by reference thereto, make a part of this their answer, the message of the President of the United States, sent to the Senate and House of Representatives on February 17, 1892, in which he informed the Congress that he would have vetoed the provision for the payment for said alleged interests had it come to him in the form of a separate measure; but attached, as it was, to the Indian appropriation bill, he could not do so without far-reaching and disastrous consequences;

the reason given being that the President thought that all the interests of the claimants had been ceded to the United States by the treaty of 1866. Said message is printed in Senate Executive Document No. 42, of the first session of the Fifty-second Congress.

51 Fourteenth. These defendants deny that any action of the Executive branch of the Government, legally exercised in the line of official duty, has recognized a right of claimants of any nature in and to the lands the subject of this suit since the date of the treaty of 1866. They deny that the action of the various officials of the United States Government, as set forth in the fourteenth paragraph of the petition, is binding on these defendants, who have never been parties to any of the treaties, conventions, or agreements heretofore made between the claimants and the United States affecting the lands at issue in this cause. Even if the United States has recognized the rights of claimants, which is denied, these defendants deny that such action has been of such a nature as to command the recognition of this court as involving the correct construction of said treaty under the laws of the United States and the usages of the Government of the United States in dealing with the aboriginal possessory rights of Indians. And while continuing to deny any right, title, or interest now, or heretofore claimed by the claimants or the United States to, or in the possession of the said lands, they now show to the court that, on the 19th day of October, 1872, an agreement was entered into, at the city of Washington, between the Commissioner of Indian Affairs and certain Indians on behalf of these defendants, the ratification of which agreement by Congress was recommended by the said Commissioner in his report for the year 1872 (page 101), said agreement giving and granting to these defendants, as a home, the lands at issue in this cause.

And in this connection these defendants also show to the court that the President of the United States, on the 17th day of December, 1883, forwarded to Congress a draft of a bill to confirm the aforesaid agreement, at the request of the Secretary of the Interior and the

52 Commissioner of Indian Affairs. (Senate Ex. Doc. No. 13, 48th Cong., 1st Sess.)

And defendants submit that the acts of the aforesaid officials in connection with the said agreement, as well as the message of the President, set forth in the thirteenth paragraph of this their answer, are not consistent with the averments of the claimants that they have an equitable interest in the lands at issue in this cause.

And defendants further submit that it was the intention of Congress in conferring upon this court jurisdiction in this cause that it should take such jurisdiction free from any entanglement that might arise from any action of one of the defendants, the United States, or its agents, so that upon consideration thereof the court might determine under said act and the laws of the United States all the rights, legal and equitable, of these defendants.

Fifteenth. Answering the fifteenth paragraph of the petition, these defendants deny that the claimants in making the treaty of April 28, 1866, were moved, influenced, or induced in a large degree to make said treaty, as to the third article thereof, by assurances held out to them and their representatives that the Indian country was to be set apart for the

of such Indians in Kansas or elsewhere as the Government might onize therein, in the sense that such use was a mere temporary use and upancy coupled with a reversion to said claimants if said lands should se to be used in common by said friendly tribes; they deny that lan- ge was ever used by any representative of the United States at the e of negotiating said treaty implying an intent on the part of the ited States to recognize a right of any name or nature on the part of imants in and to the lands retroceded by the terms of said treaty; they deny that the cession of said lands by claimants was made sub- ject to any trust or condition from and by which any benefit would ever accrue to claimants out of said lands, or whereby any legal equitable right, title, or interest in and to said lands remained in said imants. While it is true that the "friendly tribes now in Kansas," ferred to in the fifteenth paragraph of the petition, were these defend- ts, who had been driven from their pristine habitats by the disloyal rces during the war of the rebellion, and were then desired by the nited States to be returned thereto, these defendants charge and aver at the claimants herein were a part of the armed forces engaged in bellion against the authority of the United States between the years 860 and 1865, by whom these defendants were driven from their home pon the lands involved in this suit into the State of Kansas, these efendants having always been loyal to the United States and at peace herewith, and that at the time of negotiating the treaty of April 28, 1866, he said claimants, by reason of their bad faith to the United States in iolating their treaty obligations by taking up arms against the authority f the United States, had forfeited all treaty rights therewith, and that nly such rights now remain to them, the claimants, as were restored to hem by the terms of said treaty of 1866 and by the laws of the United States operating to restore to them their rights theretofore forfeited by uch violation of their treaty obligations as herein set forth.

Sixteenth. Answering the sixteenth paragraph of the petition, these defendants deny that the practical construction given to the treaty of April 28, 1866, at the time of its being negotiated for, at the time of its actual negotiation, and ever since its ratification by Congress, by the commissioners, agents, and officers of the United States whose 54 duties connected them with said negotiations and with the making of the said treaty and with the interpretation and the execution of the provisions thereof, has at all times been a construction which gave and secured to claimants any rights or equities in the said lands embraced in article 3 of said treaty, and especially any right to the lands the sub- ject of this suit, and they deny that a failure to admit rights, legal or equitable, in the claimants in and to the said lands would be a departure from the construction heretofore given to said treaty by the Government of the United States, and they aver that the treaty of 1866, herein referred to, can not equitably be construed to the detriment of these defendants, who were not parties thereto; and these defendants deny that they should be detrimentally affected by any action of their codefendant, the United States, or the agents thereof, but aver that this cause should be decided upon its merits, and that any official action which may be construed into a recognition in claimants of any right, title, or interest in and to the lands involved in this suit should not be allowed by this honorable court

to impede the equitable allowance of the rights of these defendants. They admit the decision of the Supreme Court of the United States, cited in the said paragraph, and aver that the most "cogent reasons" do exist for upholding the claims of these defendants as the same are set forth in this their answer.

Seventeenth. Answering the seventeenth paragraph of the petition, they deny that to cut off and debar claimants from any and all rights in and to said lands involved in this suit would be a violation of the property rights of the claimants; deny that said claimants have any legal or equitable rights in and to said lands and property; deny that appropriating and disposing of said property by the United States under the homestead laws and applying the proceeds from such disposition
55 to the use and benefits of these defendants would be a violation of the treaty obligations existing between the claimants and the United States; and they deny that the forty-third article of the treaty of 1866 applies to the lands west of the 98th meridian, which they claim were ceded absolutely to the United States by the third article thereof, but aver that said 43d article applies rather to the territory east of said meridian retained by the said treaty to the use of the claimants.

Eighteenth. Answering the eighteenth paragraph of claimants' petition, these defendants deny that if the court should find and hold that said article 3 of said treaty of the 28th of April, 1866, does make and constitute an absolute conveyance of the title in and to the lands involved in this suit, divested of all equities and trusts forever, then still claimants will be entitled to the decree of this court securing to them all the rights and equities by them in their petition claimed; they deny that said article 3, retroceding said lands to the United States, is in any manner inconsistent with proposition 5, as disclosed in the speech of Hon. D. N. Cooley, as set forth in the petition of claimants, but aver that the retrocession of said lands to the United States is the only action that could have been taken whereby their purchase by the United States could have been accomplished as proposed in said proposition 5; they deny that it was the intent of said proposition 5 to hold out to claimants the hope of retaining any right, title, or interest in the territory to be ceded, but aver that the treaty itself, as signed by the contracting parties and finally promulgated as approved, is the best evidence of the terms thereof and the only evidence; they deny that any inadvertence or mistake existed on the part of the commissioners and officers of the Government of the United States who procured the making of said
56 treaty of April 28, 1866, and the third article thereof, at the time of the making thereof, in omitting to insert provisions which would reserve and secure to claimants an interest, trust, and equity in said lands as set forth and claimed by claimants in their petition herein; they deny that the same was promised to be secured to claimants by the commissioners who negotiated said treaty on the part of the United States, and they deny that any mistake or inadvertence existed at the time of the making of said treaty on the part of the representatives of claimants who negotiated said treaty by their omission to reserve equities in said lands in favor of claimants; these defendants deny each and every of the allegations in the petition of claimants going to show to this court the existence of such mistake or inadvertence as alleged in said

tition; they aver that the alleged matters and things set up in the claimants' petition as going to show inadvertence and mistake, do not, in fact, ow the same, and deny that said article 3 of said treaty of 1866 ought justice and equity to be reformed so as that it will extinguish the alleged ghts and equities of the claimants in and to the lands in this suit volved and the other lands embraced in said cession. They deny that e claimants are entitled to the relief asked in the eighteenth paragraph the petition, for the many reasons elsewhere set up in this answer.

Nineteenth. These defendants deny that they have no rights to or terests in the proceeds of the disposition and sale of the lands the subct of this action; they deny that the whole or any part of money derived om such sale or disposition of said lands is the property of claimants pon the grounds set forth in claimants' petition or upon any other grounds; ey deny that it has heretofore been beyond the competency of the United States to grant unto the Wichitas and Affiliated Bands of Indians any title to or interest in the lands in controversy, or in the proceeds thereof, except a mere right of occupancy subject to a reverion in the claimants; they deny that the rights of these defendants in nd to said lands became and were absolutely terminated upon the termination of the occupancy of said lands by any Indian tribe, band, or erson who might be colonized or settled thereon by the United States; hey deny that the fifth proposition referred to by claimants is in any espect subject to the construction sought to be placed thereon by claimnts in their petition, and deny that in any way or manner all or any of he rights of these defendants in and to said lands and their proceeds are ut off or terminated by and upon the disposition of said land under the omestead laws as provided for in the act of March 2, 1895, and further leny that all interest of these defendants in the moneys arising from said ale of said lands are absolutely and forever extinguished; while admitting that these defendants have a claim or demand against the United States for and on account of their possessory rights in and to the lands involved in this suit and other lands not herein involved, they deny that such claim or demand exists only as against the United States for compensatory damages as distinguished from their right to the soil or the proceeds of the sale thereof, and they allege that their absolute right to the soil embraced in the lands involved in this action is good as against the United States, the claimants, and the entire world, and that any and all money derived from the sale or disposition of said lands, or any part thereof, or any interest therein, must be held and applied to the use of these defendants. Further answering, defendants deny that claimants are entitled to compensation for any part of the lands allotted to these defendants as charged in claimants' petition. These defendants admit that they comprise the remnants of the ancient tribes, the Wichitas, Wacos, Towaconies, Caddos, Ionis (not mentioned in the petition), Keechies, and Delawares.

Defendants deny, as elsewhere in this answer, any right by the claimants herein to compensation, as claimed in said paragraph, for either the surplus lands of the so-called Wichita Reservation, being the lands at issue in this cause, or to the lands which have been or may be allotted to these defendants in severalty in the said reservation. But they aver that whatever may be the receipts by the United States from the sale of the

lands at issue herein, they justly belong to the Wichita and Affiliated Bands of Indians, these defendants, and should legally and equitably be paid to these defendants or held and applied to their use.

Further answering, these defendants say as to the facts on which they rely for compensation in, to, and out of the lands involved in this suit, as they are required to answer under the terms of the act of Congress approved March 2, 1895, conferring jurisdiction herein upon the Court of Claims, that by reason of the prior and ancient title to the said lands in these defendants and the defective nature of the title thereto in the United States, as set forth in the third paragraph of this answer, it was beyond the competency of the United States to grant unto the Choctaw and Chickasaw Indians any title or interest in the lands in controversy or in the proceeds thereof, and they aver that the rights of these defendants in and to the said lands can only be terminated by and in accordance with the agreement entered into between these defendants and the United States on the 4th day of June, A. D. 1891, and ratified by Congress in the act approved March 2, 1895, being the same act which conferred jurisdiction on this court for the trial of this cause.

Defendants further submit that if the United States have, by treaty, convention, or otherwise, entered into any obligation to the claim-
59 ants touching the lands at issue in this cause it is a matter beyond the knowledge of these defendants and that the claim thereunder inures to them against the United States, and not against these defendants or against any moneys that may be received from the sale of the said surplus lands required by the act of March 2, 1895, to be deposited in the Treasury of the United States to be disposed of in pursuance of the judgment of this court.

And, for the same reasons, these defendants deny that the claimants have any right to compensatfon for the lands allotted to these defendants in severalty or for those set apart for educational or other uses of the Territory of Oklahoma.

In order that this honorable court may be fully informed as to the claims of these defendants and the grounds therefor, these defendants state as follows:

. The pristine habitats of these defendants (except the Delawares) were in Louisiana, Arkansas, Texas, Indian Territory, and Oklahoma. The similarity of the languages spoken by them leads ethnologists to class them together as the Caddoan lingual family (7th An. Rept. Bu. of Am. Ethn., pp. 60–61). Northeast of them lived the Siouan lingual family, with the Quapaw tribe as its southern representative. The boundary between these families is given in the aforesaid report (p. 113) as "extending from the west side of the Mississippi River in Louisiana, nearly opposite Vicksburg, Mississippi, and running northwestwardly to the bend of the Red River between Arkansas and Louisiana." Attention is called to the similarity of the same portion of the boundary of the Quapaw cession recited in paragraph three of this answer: "From the Big Raft in a direct line so as to strike the Mississippi River thirty leagues below the mouth of the Arkansaw."

60 From the Red River in southwestern Arkansas the boundary between the Caddoan and Siouan families followed the watershed between the Red and Arkansas river systems, which west of longitude

ninety-eight runs closely to the Canadian Fork. The major portion of the lands at issue in this cause are thus included in the territory of the Caddoan lingual family. The southern limit of Caddoan lands was on a line running from the above-mentioned point on the Mississippi River southwestwardly through Louisiana and Texas to the junction of Tawakonay Creek (note the name) and the Brazos River; thence following that river to Palo Pinto, Texas; thence northwest to the mouth of the North Fork of the Red River, and thence to join the northerly line near the Antelope Hills in Oklahoma. (See said Report, p. 61.)

The Caddo tribe, together with others since extinct, but belonging to the same lingual family, occupied the eastern portion of Texas, and western Arkansas and Louisiana. By a treaty with the United States, made in 1835 (7 Stat. L., 470), which by reference is made a part of this answer, this tribe ceded to the United States what are Miller County, Arkansas, and, essentially, Caddo Parish, Louisiana, and agreed to leave the United States forever. They retired into Texas, not then a portion of the United States, and were residing there when that republic was annexed to the Union. Their right to be there was recognized by the United States in the treaty of 1846, made with the Caddos and other Indians (9 Stat. L., 844), which treaty, by reference thereto, is made a part of this answer, whereby the signatory tribes were declared to be under the protection of the United States. About one-half of the Caddos remained in northern Texas until 1859, when they were brought into the Indian Territory under the agreement made in that year at Fort Arbuckle, as hereinafter set forth. The other half of the tribe, on the breaking out of the Mexican war, went to live on Caddo Creek, in the Choctaw Nation, where they remained until moved, with the others, to their present location in 1859.[1]

The Wichita tribe have ever lived along the Red River, their habitat for more than a hundred and fifty years having been west and south of the Washita River, and hence west to the one hundredth degree of west longitude. The early white explorers found this tribe as far east as Arkansas, where they have given their name to the Ouachita River, upon which they once lived. They were driven therefrom early in the eighteenth century by the more powerful tribes from the east, and retreated up the Red River.[2]

Their ancient towns were situated on this river near the 98th meridian. Here they were attacked, in 1759, by the Spaniards under Parilla, whom the Indians, 6,000 strong, defeated, capturing two bronze cannons.[3]

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[1] "Dictionary of Indian Tribes," supra; caption: Caddoan Family, Caddo Tribe. Affidavits of Caddo Indians, pp. 33 and 34, Senate Executive Document, No. 13, 48th Congress, 1st session.

[2] "Dictionary of Indian Tribes," supra; caption: Caddoan Family, Wichita Tribe; reference to writings of La Harpe (1700), Le Page Du Pratz, Tonti (1690), and Jeffries (1761).
LeClerc's "Establishment of the Faith," translated by Shea, vol. 2, p. 265.
"Relation of Joutel," Margry, vol. 3, pp. 390-412.

[3] Extracts and letters of Lieutenant-Colonel Mezieres, taken from books 27 and 28, General Archives of Mexico, copies of which are in the Bancroft Pacific Coast Library, at San Francisco, Cal. An English translation of these is found on pages 860 et seq., of the Record in Original Cause, No. 4, October Term, 1894, Supreme Court of U. S., The United States vs. The State of Texas; the reference to Parilla is on page 893.
See also History of the North American States, Works of Hubert Howe Bancroft, Vol. XV, page 627, line 30; also quoted in said Record, p. 733.

Here they were visited, in 1778, by Atanacio de Messieres, commanding a Spanish expedition;[1] in 1788, by Francisco Xavier Fragoso,[2]
62 and again in 1803, by Francis Grappe.[3] Tradition of the tribe says that they removed from these ancient towns, after a fight with the whites, and settled on Cache Creek, where they lost one-half of their people from smallpox. Later they lived at the mouth of Otter Creek.[4] In 1834 they were visited at their town, then near the present site of Fort Sill, by Col. Dodge, U. S. A., said to be the first United States official ever among them.[5] Later they removed to Rush Springs where they were found by a party of United States surveyors in 1858. In the latter year a Comanche party, brought in by Wichita scouts for a conference with the authorities at Fort Arbuckle, were attacked and wiped out of existence by Major Van Dorn, U. S. A. (who had followed them from the west without knowing of the proposed negotiations), and the Wichitas, fearing the venge'nce of the Comanches, sought protection at Fort Arbuckle where they remained until after the conference at that post in 1859. In the fight mentioned all the crops of the Wichitas were destroyed and their means of subsistence for the year taken away.[6]

The Wichita Indians were always industrious, peaceful, and non-nomadic. They were an agricultural people, raising crops of corn, melons, and pumpkins which they traded with the Comanches and other roving tribes.[7] With these peaceful habits they united hunting, and
63 while living near the Red River, they have always hunted over all of the lands contained in the so-called leased district, and their right to these as the hunting grounds of the tribe have, from time immemorial, been recognized by all other Indians living near them.

On the 24th of August, 1835, the United States entered into a treaty with the Comanches and Wichitas, and the Comanches and Wichitas with the tribes mentioned in the preamble, in which this right is fully recognized by all the signatories, which treaty, by reference thereto, is made a part of this answer. (7 Stat. L., 474.)

Its preamble recites that it was made "for the purpose of establishing and perpetuating peace and friendship between the United States of America and the Comanche and Wichetaw nations and their associated bands or tribes of Indians, and between these nations or tribes and the Cherokee, Muscogee, Choctaw, Osage, Seneca and Quapaw nations or tribes of Indians," etc. It contains the following provisions:

Article 3. "There shall be a free and friendly intercourse between all the contracting parties hereto, and it is distinctly understood and agreed

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[1] See second report of Messieres, supra; p. 890 et seq., of above-mentioned record.

[2] Itinerary, etc., of Fragoso, published in "Report of Texas Boundary Commission," House of Representatives, Executive Document, No. 21, 50th Congress, 1st session, p. 48 et seq.

[3] John Sibley's "Historical Sketches of the Several Indian Tribes in Louisiana south of the Arkansas River, and between the Mississippi and the river Grande," American State Papers, vol. 5; Indian Affairs, vol. 2, p. 721 et seq. See also letters of Sibley to General Dearborn, Secretary of War, published on pages 747 et seq., of the Record aforesaid.

[4] Affidavits of Wichita Indians, p. 32, Senate Executive Document, No. 13, 48th Congress, 1st session.

[5] Report of the Secretary of War for 1834, Ex. Doc., No. 2, H. R., 23d Congress, 2d session, p. 70 et seq.

[6] Report of Commissioner of Indian Affairs, 1868, p. 267 et seq.

[7] See second report of Messierres, supra.
Report of Secretary of War, 1834, supra.

by the Comanche and Witchetaw nations and their associated bands or tribes of Indians, that the citizens of the United States are freely permitted to pass and repass through their settlements or hunting grounds without molestation or injury on their way to any of the provinces of the Republic of Mexico or returning therefrom." * * *

Article 4. "It is understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timbers, to the western limits of the United States."

Article 5. "The Comanche and Witchetaw nations and their associated bands or tribes of Indians, severally agree and bind themselves to pay full value for any injury their people may do to the goods or other property of such traders as the President of the United States may place near to their settlements or hunting ground for the purpose of trading with them."

Article 6. "The Comanche and Witchetaw nations and their associated bands or tribes of Indians agree that, in the event of any of the Red people belonging to the nations or tribes residing south of the Missouri River and west of the State of Missouri, not parties to this treaty, should visit their own towns or be found on their hunting grounds that they will treat them with kindness and friendship and do no injury to them in any way whatever."

64 Article 9. "The Comanche and Witchetaw nations and their associated bands or tribes of Indians agree that their entering into this treaty shall in no respect interrupt their friendly relations with the Republic of Mexico, where they all frequently hunt and the Comanche Nation principally inhabit."

From the above it is evident that the "great prairie west of the cross timbers, to the western limits of the United States" was the subject-matter of this treaty, and that the Wichitas and the Comanches were called upon by the United States to agree with them and the other signatory tribes in respect to that particular country and none other.

The treaty operated and still operates as an estoppel against the United States and the Choctaws in favor of the Wichitas.

By calling upon the Wichitas to enter into a treaty speaking of their settlements, towns, and hunting grounds in that country, and asking them to agree to refrain from doing certain things and to permit others to do certain other things therein, the United States and the Choctaw Nation most solemnly and conclusively recognized that the Wichitas had such towns and hunting grounds and dominion, and had thereby the usual or customary Indian title, by occupation, to that country. The treaty, therefore, forever estops the United States and the Choctaw Nation from denying that the Wichitas then had such a title thereto.

The "cross timbers" mentioned in the fourth article of this treaty are situated at 97° west longitude, and the western limits of the United States at 100° west longitude, and as Texas was not admitted to the Union at that time, the territory covered by the said treaty lay entirely north of the Red River and included the whole of the Choctaw so-called leased district, together with a strip of land one degree east thereof, thus affirming the title of the Wichita Indians to the lands at issue in this cause. And these defendants aver that the title so affirmed has

65 never been extinguished except so far as it has been extinguished in relation to the lands at issue herein by the agreement of 1891.

And defendants especially call attention to the ninth paragraph of the said treaty, in which it is asserted that the said Comanche Indians then lived principally in the Republic of Mexico, and aver that they had no right of occupancy in the lands north of the Red River, though they were permitted to hunt there by the Wichitas, the proprietors of the land. And defendants aver that this permission was not accorded because of any right thereto existing in the said Comanches, but because rather than make the said Comanches their enemies, they had from time immemorial permitted the said tribe to cheat and rob them in their barter and trade.[1]

Of the other defendant Indians, the Towaconis and Wacos are closely related to the Wichitas, and prior to 1859 lived in northern Texas. The village of the latter tribe was at the site of the present city of Waco. The Ionies were more nearly akin to the Caddos, and lived in the southern portion of the Caddoan territory, as above set forth. The Kichais were in 1859 brought, as hereinafter related, from northern Texas where they had resided from the time of the earliest visits by white men in 1541 and long before.

All of these Indians, and others of their kindred now extinct, have from time immemorial resided in Texas, north and east of the Brazos River. They have been known generally as the "Tejas" or "Texas" Indians, although the name is more accurately applied to the Ionies. They were visited by the whites in 1536 (by Alvar Nunez Cabeca de Vaca) and in 1540 (by Francisco Vasquez de Coronado), and have ever since been well known to the Spaniards and Texans.

66 In 1854, after the annexation of Texas to the Union, that State authorized the setting apart of a reservation, and one was selected on the Brazos River at the mouth of the Clear Fork thereof, containing eight square leagues, or about 46,000 acres. Here the Texas Indians were gathered to some extent, although no Delawares or Kichais were among them, and one-half of the Caddos were in the Choctaw Nation, as heretofore related.[2]

Aggressive action by the whites of the neighborhood caused trouble, and the superintendent, Robert S. Neighbors, obtained the consent of the Indian Department to remove these Indians to the so-called leased district in the Indian Territory.

Superintendent Rector, of the Southern Superintendency, gathered together the scattered Indians into a camp near Fort Arbuckle, and on the 30th day of June, 1859, Superintendent Neighbors arrived with the chiefs of the tribes living on the Brazos River and elsewhere in northern Texas, and a council was held with the chiefs of the Wichitas and with Messrs. Neighbors, Rector, and Pike (Albert), as representatives on behalf of the United States.

At this council the Government representatives distinctly and unequivocally told the Indians that it was the desire of the Government to settle them in a permanent home, and to bring the Texas Indians out of their unpleasant surroundings; that the latter would be given a much larger

[1] Second Report of Messierres, supra.
Report of Secretary of War, 1834, supra.
[2] See reports of superintendents of Southern and Texas superintendencies, in reports of Commissioner of Indian Affairs, 1855 to 1860.

territory than they possessed in Texas; that they were to occupy it with the Wichitas, and it was to be theirs and their children's home forever. The territory set apart for them, as the Indians were then told, was bounded east and west by the 98th and 100th meridians, and north
67 and south by the Canadian and Red rivers. By natural objects it was described to them as running from the Red River to the Canadian, and from the creek below the Cottonwood Grove on the Washita to a point six miles west of the Antelope Hills. The Indians were told they could live anywhere within these bounds, and that the Government would build them an agency and a fort on the Washita River for their protection against the whites and the hostile plains Indians; that the Government would build them houses to replace those that they must leave behind on the Brazos, and would compensate them for the loss of any property they could not bring with them.

Relying on these representations on behalf of the United States, the Texas Indians came north and joined the Wichitas in the so-called leased district in the Indian Territory, giving up their old homes and the lands on which they had been promised by the Government of the United States, in 1854, they could live forever,[1] under the protection of the treaty of 1846, which they had made with the United States, and which has already been referred to in the early portion of this paragraph. The result of these negotiations was that these defendant Indians were comfortably and happily settled in the so-called leased district between the Washita and Canadian rivers, on the lands at issue in this cause, with the assurance that the whole of that district belonged to them and to them alone, as indeed it had been confirmed to the Wichitas by the treaty of 1835.

In 1861, at the breaking out of the civil war, the country of these defendants was invaded by troops of the so-called Confederate States, hostile to these defendants, who were always loyal to the United States, causing them to retreat into Kansas, abandoning their homes and crops, and helpless, sick, and needy, to remain in a strange country, among
68 strange people, for nearly seven years. In 1867 they were returned to their old home, where they have ever since resided.

The failure on the part of the United States to confirm by treaty the promises made at Fort Arbuckle, as hereinbefore related, has been the cause of much trouble, and left it in the power of the United States to little by little take from these defendants the lands then and there confirmed to them "for their use and their children's use so long as grass should grow and water should run." In pursuance of this policy the United States, in 1867, set apart, by treaty with the Kiowas and Comanches, all the southern half of the so-called leased district, containing 3,549,440 acres, but excluding "Greer County," now in dispute between the United States and the State of Texas. To this treaty these defendants were not parties and their consent thereto was neither solicited nor obtained. The said treaty, by reference thereto, is made a part of this answer. (15 Stat. L., 581.) By an executive order, dated August 10, 1869, the President of the United States reserved all the rest of the so-called leased district, except Greer County, to the Cheyennes and Arapahoes, who, by the treaty of 1855 with the Choctaws, were expressly

[1] Affidavits of various Indians, Senate Ex. Doc. No. 13, 48th Cong., 1st sess., p. 30 et seq.

excluded from participation therein. The aforesaid executive order was based upon a misunderstanding of the recommendations of Gen. W. B. Hazen, U. S. A., their superintendent at that time, who proposed that the Cheyennes and Arapahoes should be entirely located north of the Canadian River and these defendants south thereof.[1]

Because of the repeated recommendations of the agent in charge of the Indians in the so-called leased district, among whom were these defendants, and depredations made by Indians other than these defendants, commissioners were sent in 1872 to the Indian Territory, from whence,
69 in that year, were taken to Washington City certain of the chiefs and head men of the tribes and bands composing these defendants. These chiefs and head men were hastily selected by the Indian agent prior to the departure of the Commissioner and were not in any way delegated or empowered to act for these defendants in the cession of any lands.

To this body of chiefs and head men was presented by the Commissioner of Indian Affairs, who persuaded them to sign it, as they did under protest, an agreement in the words and figures following:[2]

"Articles of agreement made and concluded at Washington City, District of Columbia, this nineteenth day of October, A. D. 1872, by and between Francis A. Walker, Commissioner of Indian Affairs, representing the United States, of the one part, and the undersigned chiefs, head men and members of the Wichitas and affiliated bands of Indians duly authorized to act for their people, of the other part, witnesseth:

"ARTICLE 1. The United States hereby give and grant to the said Wichitas and other affiliated bands, for a home, the tract of country bounded as follows, to wit: Commencing at a point in the middle of the main channel of the Washita River where the 98th meridian of west longitude crosses the same, hence up the middle of the main channel of said river, to the line of 98° 40′ W. L., thence on said line of 98° 40′ due north to the middle of the main channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the 98th meridian, thence due south to the place of beginning.

"ARTICLE 2. In consideration of the reservation provided for in the preceding article the said Wichitas and other affiliated bands hereby cede and relinquish to the United States all right, title, interest or claim of any nature whatsoever, in and to any lands in Texas, Louisiana, Indian Territory, or elsewhere within the limits of the United States."

In his annual report for 1872 the Commissioner of Indian Affairs (p. 101) recommends the ratification of this agreement, but no action was taken by Congress upon this recommendation.

On the 17th of December, 1883, the President of the United States, in a special message, presented to Congress a draft of a bill to, among other things, confirm the aforesaid agreement. No action was taken by Congress thereon. The said message and the accompanying doc-
70 uments, including the affidavits of Indians belonging to the Wichitas and affiliated bands, is referred to in this answer, to be incorporated as a part of the record in this action, and it is prayed the same

[1] Letter of W. B. Hazen, Sen. Ex. Doc., No. 13, supra, p. 40.
[2] Statement of Wm. Shirley, and affidavits of J. J. Sturm and Philip McCusker, Sen. Ex. Doc., No. 13, supra, p. 37 et seq.

will be read and considered as such, being embraced in and made a part of Senate Executive Document, No. 13, 48th Congress, 1st session, comprising printed pages 1 to 41 thereof, with accompanying maps.

An act of Congress was passed in 1887, and amended by a subsequent act in 1891 (24 Stat. L., 388 and 26 Stat. L., 794) for the allotment of lands in severalty to Indians and for the purchase by the United States of the surplus lands of the Indian reservations after such allotment. This act limited these reservations to those "created for their use by treaty stipulation or by virtue of an act of Congress or Executive order." Under the provisions of these acts an agreement was made on June 4th, 1891, between the United States and these defendants, for the sale of the surplus lands of the "Wichita Reservation," which are the lands at issue in this cause, and the said agreement was ratified by Congress by the act of March 2, 1895 (28 Stat. L., 876), the same act which conferred jurisdiction upon this honorable court to hear this cause.

The above premises considered, these defendants aver that the Wichita Indians were the aboriginal owners of the lands at issue in this cause; that this aboriginal possessory right has never been extinguished, and that it is confirmed to them in the lands involved in this suit by the setting apart to them of said lands by the United States as their permanent home and by other acts of the United States, and that under the laws of nations and of the United States relating to aboriginal possession they were entitled prior to the agreement of 1891 to the sole occupancy thereof,

71 subject, however, to the rights acquired therein by the other tribes and bands of these defendants, through the acquiescence by the said Wichitas in their joint occupancy of the said lands since 1859.

And these defendants further aver that the aboriginal rights of the said Wichitas were acknowledged by the United States and the Choctaw Nation in the treaty of 1835, which has never been abrogated nor in any way changed with the consent of the said Wichitas, which consent was necessary to the validity of such a change.

And those defendants further aver that the whole of the so-called leased district was confirmed to these defendants in 1859, thus securing the occupancy of the lands at issue in this cause to these defendants forever.

And these defendants further aver that although the agreement of 1872 did not receive the ratification of Congress, yet the acts of 1887 and 1891, heretofore recited, limiting the allotment of lands in severalty and the purchase of surplus lands to reservations legally held by Indian tribes, the subsequent acts of the United States in making such allotments to these defendants and in agreeing to purchase their surplus lands, are to be construed in favor of the claim of these defendants that the said reservation was held by them in due form of law.

And these defendants further aver that their title to the lands at issue in this cause, whether held under their aboriginal rights, or under the treaty of 1835, or under the agreement of 1859, or finally under the agreement of 1872, as ratified by the subsequent acts of the United States as aforesaid, has never been alienated by them or quieted in any way whatever, except by the agreement of 1891, as ratified by the act of March 2, 1895.

72 PRAYER.

Wherefore, all the aforesaid premises considered, these defendants, the Wichita and Affiliated Bands of Indians, pray as follows:

(1) That the petition of the claimants herein may be hence dismissed, and the relief prayed for by them may be in every respect denied;

(2) That this court will decree that these defendants, in law and in equity, are entitled to all the proceeds of the sale of all the lands at issue in this cause, and that this court will pass a decree that, from time to time, as the said sales are made, and the proceeds thereof deposited in the Treasury, as provided by the act of March 2, 1895, the same may be paid to these defendants in the manner required by law;

(3) And for such other and further relief as shall seem proper to the court in the premises.

JOSIAH M. VALE,
ANDREW A. LIPSCOMB,
Attorneys for the Wichitas and Affiliated Bands of Indians.

PHILIP WALKER,
WILLIAM C. SHELLEY,
Counsel.

73 DISTRICT OF COLUMBIA, *ss.*

We, Josiah M. Vale and Andrew A. Lipscomb, being duly sworn, do state on oath that we have read the foregoing answer of the Wichita and Affiliated Bands of Indians, and that we know the contents thereof; that we are the attorneys of said Indians, and we state on information and belief that the facts set forth in said answer by us subscribed are true; that no assignment or transfer of the claims of the defendants, the Wichita and Affiliated Bands of Indians, as set forth in said answer, has ever been made or any part thereof or interest therein; that the said defendant Indians are justly entitled to the rights, equities, properties, compensation, and moneys, as claimed in their said answer as against the Choctaw and Chickasaw nations, and also against the United States after the allowance of all just credits and set-offs.

JOSIAH M. VALE.
ANDREW A. LIPSCOMB.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 10th day of August, A. D. 1895.

[SEAL.] SAMUEL A. DRURY,
Notary Public.

74 In the Court of Claims of the United States, December term, 1897.

THE CHOCTAW NATION AND THE CHICKASAW Nation
v.
THE UNITED STATES AND THE WICHITA AND Affiliated Bands of Indians. } No. 18932.

Answer of the United States.—Filed February 12, 1898.

Now comes the Attorney-General, in behalf of the United States, and answering the petition of the claimants and the answer of the defendant Indians herein, respectfully represents:

The allegations contained in the first nine sections of the petition are admitted, except as to the last paragraph of the ninth section, the allegation of which is denied.

The allegations contained in the last ten sections of the petition are denied, except as to the first two paragraphs of the nineteenth section.

The allegations contained in the answer of the defendant Indians are denied in so far as they assert, or tend to assert, that the defendant
75 Indians, or any of them, had any right of occupancy within the district between the Canadian and Red rivers and the ninety-eighth and one-hundredth meridians of west longitude prior to 1859, and in so far as they assert, or tend to assert, that the said Indians were promised or given in 1859 more than 154,240 acres within the said district, and in so far as they assert that the agreement of October 19, 1872, was executed without authority and under duress.

And in further answer to the said petition and the answer of the defendant Indians thereto, the Attorney-General respectfully represents:

I. The country ceded by the Quapaws to the United States by the treaty of August 24, 1818, did not extend west of the one-hundredth meridian, the understanding of the United States, and of the Quapaws as far as they had any definite ideas on the subject, being that the source of the Canadian Fork was east of that line, and their intention being that the cession should extend up the Canadian Fork to where they understood the source to be.

II. The country ceded by the United States to the Choctaws by the treaty of October 18, 1820, was the western portion of the country ceded by the Quapaws in 1818, and did not extend west of the one-hundredth meridian, the understanding and intention of both parties to the treaty of 1820 as to the location of the source of the Canadian Fork and of the western boundary of the cession being the same as the understanding and intention of the parties to the treaty of 1818.

III. The first time of which there is any record or suggestion
76 that the Choctaws claimed that the treaty of October 18, 1820, had granted them land west of the one-hundredth meridian was on July 11, 1854, pending the negotiations to the treaty of 1855. The United States did not admit the validity of this claim, but insisted that a formal relinquishment should be coupled with the so-called lease of the country between the ninety-eighth and one-hundredth meridians.

IV. Early in 1861 the Choctaw and Chickasaw nations declared themselves in sympathy with the Southern States. On July 12, 1861, they made a formal treaty with the so-called Confederate States of America, and for nearly four years thereafter they were actively engaged in hostilities against the United States.

V. The Choctaws, Chickasaws, and other Indian tribes who were represented at the Fort Smith council in September, 1865, were informed by the United States commissioners that in consequence of their participation in the war of the rebellion new treaties would be required of them, to contain substantially the following stipulations:

"1. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and with the United States.

"2. Those settled in the Indian Territory must bind themselves, when called upon by the Government, to aid in compelling the Indians of the

plains to maintain peaceful relations with each other, with the Indians in the Territory, and with the United States.

"3. The institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and
77 for their incorporation into the tribes on an equal footing with the original members, or suitably provided for.

"4. A stipulation in the treaties that slavery or involuntary servitude shall never exist in the tribe or nation, except in punishment of crime.

"5. A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by the Government or such as may be fixed by the Government.

"6. It is the policy of the Government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one consolidated government, after the plan proposed by the Senate of the United States for organizing the Indian Territory.

"7. No white person, except officers, agents, and employees of the Government, or of any internal improvement authorized by the Government, will be permitted to reside in the Territory, unless formally incorporated with some tribe, according to the usages of the band."

VI. The cession of the leased district by Article III of the treaty of April 28, 1866, was in no way affected or controlled by the fifth stipulation presented at the Fort Smith council.

VII. In pursuance of Article III of the treaty of April 28, 1866, $225,000 have been paid to the Choctaw Nation, besides $7,125 interest. Sixty thousand dollars have been advanced to the Chickasaw Nation, but as the Chickasaw legislature has not yet enacted the necessary
78 laws, rules, and regulations in relation to persons of African descent, the balance of the share of the Chickasaw Nation in the purchase money of the leased district has not yet been paid.

VIII. At the time of the making of the treaty of April 28, 1866, the people of the Choctaw and Chickasaw nations were not unlettered, but they had for many years been living as civilized communities under organized governments, and at the making of this treaty they had the aid of able and experienced counsel.

IX. Until the year 1890, or shortly before, it does not appear to have been doubted, either by any officer of the United States or by the Choctaws and Chickasaws, that the latter had made, by the treaty of 1866, an absolute cession of the previously leased district.

X. For several years past the Choctaw and Chickasaw nations have permitted white persons, not members of their tribes, to reside within their respective districts. The United States census of 1890 reports the number of white persons residing within the territory of the Choctaw Nation as 28,345, and the number of those residing within the territory of the Chickasaw Nation as 48,421, the number of the citizens of those nations being reported as 10,017 and 3,941, respectively.

XI. In 1850 neither the Wichita tribe nor the bands affiliated therewith had any right of occupancy in any portion of the district between the Canadian and Red rivers and the ninety-eighth and one hundredth meridians.

III. In 1859 two reservations, aggregating 154,120 acres, were set t within the said district for the Wichita and affiliated bands of Indians, and they were located on the two said reservations being given to understand that these reservations were to constitute their permanent homes, and that none of them could leave the reservas without permission of the agent.

PRAYER.

Wherefore, all the premises aforesaid considered, the Attorney-General vs as follows:

. That the petition of the claimants herein may be dismissed.

. That the court will decree that the Wichita and affiliated bands of ians are entitled to so much land in the present Wichita Reservation may be allotted to them under Article IV of the agreement of June 1891.

. That no decree be made in favor of the Wichita and affiliated bands Indians for the proceeds of the sales of unallotted or surplus lands in said Wichita Reservation, unless it shall be also decreed that the said chita and affiliated bands of Indians shall execute to the United States elease and quitclaim of all right, title, interest, and claim of any nature atsoever in, to, or for any lands outside of the limits of the said Wichita servation.

. That the court will decree that unless such release and quitclaim be cuted as aforesaid, the proceeds of the sales of unallotted or surplus ds in the said Wichita Reservation shall be and remain the exclusive perty of the United States.

L. A. PRADT,
Assistant Attorney-General.

Evidence for the claimants.

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81 *Deposition of Halbert E. Paine, for claimants, taken at Washington, D. C., on the 25th day of April, A. D. 1896.*

Claimants' counsel, J. M. Wilson and others; defendants' counsel, C. C. Binney and others.

Deposition of a witness produced, sworn, and examined at the hour of 11 o'clock a. m., on the 25th day of April, 1896, at room 128, Washington Loan and Trust Building, Washington, D. C., before me, the undersigned, a notary public, in a certain cause now pending in the Court of Claims, wherein the Choctaw and Chickasaw nations are claimants and the United States and the Wichita and affiliated bands of Indians are defendants; when were present J. S. Standley, delegate appearing for the Choctaw and Chickasaw nations; Charles C. Binney, Assistant Attorney-General, appearing for the United States; and J. M. Vale and Philip Walker, appearing on behalf of the Wichita and affiliated bands of Indians.

HALBERT E. PAINE, having been produced as a witness on behalf of the claimants, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon deposed and said that his name is Halbert E. Paine; that his occupation is that of attorney at law; that he is 70 years of age; that his place of residence is Washington, D. C.; that he has an interest in this case; that the Chickasaw legislature enacted a law, without his knowledge or request, directing the governor to employ him to assist in the prosecution of the case for a contingent compensation not exceeding 5 per cent on any amount that the Chickasaw Nation might recover; that this contract was made between the governor of the Chickasaw Nation and himself, but the Commissioner of Indian Affairs, as he is informed, thinks that the contract should contain in the body of the instrument a statement that he is an attorney at law, and also, in the body of the instrument, a statement of the time and place where he executed the contract, and the time and place where Governor Mosely executed it, these statements being, in the contract, only shown in the certificates of the judges before whom the contract was executed; that he is further informed that the Commissioner thinks that the rate of compensation should either be reduced or a maximum limit fixed; to all of these things he assents cheerfully, and is informed that when the contract shall be modified to meet the views of the Commissioner it will be approved; that such is the nature of his interest in the case; that

ere are other minor details which the Commissioner thinks should be ubodied in the contract; that he is not in any way related to the gov- nor of the Chickasaw Nation or to any of its members, to his nowledge.

And thereupon the said Halbert E. Paine was examined by J. S. andley, the counsel for the claimants, and, in answer to interrogatories, stified as follows:

1. Question. Has any evidence been filed, with your knowledge, in he case of the Choctaw and Chickasaw nations, claimants, against the nited States and the Wichita and affiliated bands of Indians, defend- nts, in the Court of Claims?

Answer. Such evidence has been filed.

2 2. Question. By whom, and when?

Answer. By myself, on Tuesday, the 21st instant.

3. Question. How many items of such evidence have you filed?

Answer. Fifty-four, numbered, respectively, from 1 to 54.

4. Question. Of what does such evidence consist?

Answer. Of printed or typewritten extracts from certain books and ocuments now in the Library of Congress, the library of the Senate, the brary of the House of Representatives, and in certain Executive Depart- ents of the Government of the United States; also of tracings from aps, which maps are, for the most part, now in the Library of Con- ress. A few of them are in the third volume of the record of the case f The United States v. The State of Texas, which was tried and decided s an original case by the Supreme Court. That third volume has not et been bound; when it is bound it will also be in the Library of Congress.

5. Question. Have you compared the extracts which were filed, as tated, with the documents from which they have been copied?

Answer. I have.

6. Question. Are they accurate and correct copies of the items?

Answer. They are now; I carefully compared them. In two or three f them I found slight verbal inaccuracies which I corrected with a pen, s will be found upon inspecting the extracts.

7. Question. By whom were the tracings from maps made, as stated?

Answer. I made them myself.

8. Question. Are those tracings all accurate?

Answer. I think they are; I took very great pains to make them so. The tracings do not purport to show everything on the maps; only designed to show those things that are put on pertinent to this case. They do show, I believe, everything that is pertinent to this case in favor of either party.

9. Question. Whose affidavits are prefixed to the several items of evi- dence filed by yourself, as stated?

Answer. Mine.

10. Question. Are the statements of facts contained in each and all those affidavits correct and true?

Answer. They are. I should say this, that on a few of the maps the Ferro longitude is given, which is longitude east from Ferro, I have in one case, possibly in two, not only given the Ferro longitude, but have introduced in brackets the Greenwich longitude corresponding to the

Ferro longitude, but I have only done that in one or, at most, two cases, it being very easy to reduce Ferro longitude to Greenwich longitude.

(The witness now makes the statements of facts contained in these several affidavits a part of his testimony in this disposition.

The claimants offer these fifty-four different items of evidence to which witness testified as evidence in chief on their behalf in this case.)

Objection by Mr. BINNEY: Counsel for the United States, not having any previous knowledge of these papers and tracings referred to by the witness, nor any opportunity to examine them, reserves all right to make objection thereto, and also the right to cross-examine witness as to such statements as may appear in his affidavits.

Objection by Mr. VALE: Objection is made on the part of the defendant Indians, the Wichita and affiliated bands, for that the extracts,
83 tracings, and other documents proposed to be offered in evidence are irrelevant, incompetent, and immaterial, and the same are not admissible under the stipulation filed in this cause between the litigant Indians.

Cross-examination by Mr. WALKER:

1. Question. You said that the tracings of maps contained everything in the original that was pertinent to the cause. The tracings, as I understand it, cover a section only of the territory covered by the map itself, and that section the section containing the territory at issue. Do I make myself understood? You have not filed the tracing of the whole map in any case?

Answer. In only a few cases; in only those cases where the map was small enough to be embraced in the paper which I used.

2. Question. On the portions of the maps which you have traced are all of the data referring to rivers and names included?

Answer. I believe so; I mean, of course, all the data referring to rivers and names pertinent to this case.

3. Question. I especially apply that to the names of villages and Indian tribes.

Answer. I have aimed to include not only the names by which the Wichita and affiliated bands are ordinarily known, but also all the numerous names by which they have been designated at different times by different nations.

4. Question. Have you included, also, the names which evidently apply to tribes of Indians who are not litigants herein, where those names may possibly appear on such maps?

Answer. Not all, I presume, but very many of them.

5. Question. Do the tracings contain such memoranda as will show to the court the author of map, the place of publication, and the date?

Answer. They do in all cases in which those data could be ascertained. There are some maps in the Library of Congress published without any dates showing when they were published or when they were made. In those cases I have been compelled to give approximate dates when I have given any dates at all, but there has been no great difficulty in ascertaining approximately when the maps were made, because the time in which the map makers lived is known.

6. Question. In cases where the approximate dates are given is it ted upon the tracing that they are approximate dates and not accurate tes?

Answer. I think it is.

The examination by counsel being concluded, the witness, in compli- ce with the rule of the court requiring him to state whether he knows any other matter relative to the claim in question, and if he do to state , says:

I have no further knowledge respecting the particular matters to which have testified.

H. E. PAINE.

I, S. G. Hopkins, a notary public in and for the District of Columbia, ertify that at the time and place aforesaid Halbert E. Paine, witness on ehalf of the Choctaw and Chickasaw nations in the above-entitled cause, was by me sworn, before any question was put to him, to tell the 4 truth, the whole truth, and nothing but the truth relative to the said cause; and that his answers were taken down in my presence, nd his deposition as above set forth was read over to and signed by him, efore me, at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 25th day of April, 1896.

[SEAL.]

S. G. HOPKINS,
Notary Public, District of Columbia.

[Exhibits to this deposition, Nos. 1 to 20, inclusive; also Nos. 41, 42, 43, and 44, and Nos. 50, 51, 52, and 54 are omitted by order of court from this record, being extracts from public documents which are the subject of judicial notice in the argument of the case.]

Deposition of Cyrus Bussey, for claimants, taken at Washington, D. C., on the 23d day of July, A. D. 1896.

Claimants' counsel, J. M. Wilson and others; defendants' counsel, C. C. Binney and others.

Depositions of witnesses produced, sworn, and examined at the hour of 11 o'clock a. m. on the 23d day of July, 1896, at the office of Messrs. Shellabarger & Wilson, No. 1416 F street NW., in said city, before me, the undersigned, a notary public, in a certain cause now pending in the Court of Claims, wherein the Choctaw and Chickasaw nations of Indians are claimants and the United States and the Wichita and affiliated bands of Indians in the Indian Territory are defendants. There were present on behalf of the claimants the Hon. Halbert E. Paine and James S. Standley, esq.; on behalf of the United States the Hon. Charles C. Binney, and on behalf of the defendants, the Wichita and affiliated bands, Messrs. J. M. Vale and Andrew A. Lipscomb, as attorneys, and Messrs. Philip Walker and William C. Shelley, as of counsel for said last-named defendants.

CYRUS BUSSEY, having been produced as a witness on behalf of the claimants, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the matters at issue in said cause; and thereupon deposed and said that his name is Cyrus Bussey; that his occupation is that of an attorney at law; that

he is 62 years of age, and that his place of residence is No. 1204 M street NW., Washington, D. C.; that he has no interest, direct or indirect, in the claim which is the subject of this inquiry, and that he is not related to any of the parties hereto.

And thereupon the said Cyrus Bussey was examined by counsel for the claimants, and, in answer to interrogatories, testified as follows:

Direct examination by Mr. PAINE:

1. Question. What offices, civil or military, if any, have you held under the Government of the United States?

Answer. I was colonel of the Third Iowa Cavalry at the beginning of the war; was a brigadier-general and brevet major-general of United States Volunteers, and in 1889 was appointed Assistant Secretary of the Department of the Interior, which office I held for four years.

2. Question. What was your occupation in the year 1865?

Answer. I was a brigadier-general of United States Volunteers, in command of the Third Division of the Seventh Army Corps, with headquarters at Fort Smith, Ark. My command embraced Western
85 Arkansas and the Indian Territory, with troops stationed at Clarksville, Van Buren, Fayetteville, and Fort Smith, Ark., and a brigade stationed at Fort Gibson, in the Cherokee Nation.

3. Question. When and by whom were you assigned to that command?

Answer. I was assigned to that command by Gen. J. J. Reynolds, commanding the Department of Arkansas and the Seventh Army Corps, on the 6th of February, 1865.

4. Question. Had you any personal knowledge of the proceedings of the council held by the commissioners of the United States and of different Indian nations at Fort Smith in 1865?

(Question objected to by counsel for defendants for the reason that the official records are the best obtainable evidence respecting the treaty of 1865, and that the knowledge of this witness, unless he is shown to have been a member of the commission, or officially connected with the treaty named, is incompetent, irrelevant, and immaterial.)

Answer. I had official correspondence, while in command at Fort Smith, with Winchester Colbert, governor of the Chickasaw Nation, and Governor P. P. Pitchlynn, principal chief of the Choctaw Nation, and with Col. Lewis Downing and others of the Cherokee Nation, concerning the meeting of an Indian council. This correspondence began as early as July 6, 1865, and continued until the council met. I furnished the commissioners, when they arrived there, with a meeting place and was present at their meetings every day.

5. Question. Had you any personal acquaintance with any of the commissioners on the part of the Indians and the United States?

(Objected to by counsel for the defendants for the reason that the testimony is incompetent, irrelevant, and immaterial.)

Answer. I was personally acquainted with all of the commissioners on the part of the Government, except Mr. Worcester, and was personally acquainted with many of the Indians. All the rebel Indians who served under General Cooper surrendered to me prior to the meeting of this council. I knew many of the Cherokees, Creeks, and Chickasaws, having three Indian regiments in my command.

6. Question. Did you perform any duties in connection with that council of 1865?

Answer. The only duties I performed were to be present in my official capacity—to preserve order and supply their wants as far as possible. I occupied no official position as a member of the council.

7. Question. Will you state what proceedings were had by the commissioners under your personal observation?

(Objected to by counsel for defendants for the reason that the record of the proceedings is the best evidence thereof, and that the statements of this witness, not officially connected with the commission, are incompetent, irrelevant, and immaterial.)

Answer. The commissioners of the United States notified the Indians that they had forfeited their rights to lands and annuities because of the treaties that they had made with the rebels and the active part they had taken in the war, but that the Great Father did not desire to take advantage of the forfeiture, but did desire to reestablish the treaty of peace with all the Indians there in council, in which event they would be forgiven for having gone into rebellion against the Government.

86 8. Question. Did the commissioners, with your knowledge, reach any agreement as to the main points to be embraced in the proposed treaty between the United States and the Indian nations?

(Objected to by counsel for the defendants for the reasons assigned in the objection to the last preceding question, and further that any agreement then reached is merged in the treaty.)

Answer. The council reached an agreement so far as the treaty of peace was concerned, but the Indians there present disclaimed authority to enter into any specific agreement about anything else, and asked time to report to their people, saying that when they did so commissioners would be appointed to make a future treaty. That, I believe, was the final agreement reached.

9. Question. In what condition did you find the Indians, and their stock and property, when you assumed command at Fort Smith?

(Objected to as incompetent, irrelevant, and immaterial.)

Answer. I was sent to Fort Smith to take command of that district because of reports that had been made to the War Department that a state of demoralization existed among the troops, and that the people in western Arkansas and the Indian Territory had been plundered of a large amount of property. A large number of cattle had been stolen and driven out of the country. The Government desired to break up that policy and sent me there for that purpose. I made a thorough investigation, arrested and tried by court-martial a number of officers who were engaged in the frauds, and reached the conclusion that about 300,000 head of cattle had been stolen and driven out of the Indian country prior to that time. When I arrived there the troops of that command had been supplied by wagon trains from Fort Leavenworth, Kans., requiring from 200 to 300 men to guard each train. The trains going from the army to Fort Leavenworth hauled the plunder that was picked up by the parties, and after assuming command I stopped a train part way on the road and sent it back. There was no further communication between Fort Gibson and Fort Leavenworth by train during the

time I was in command, and the army was afterwards supplied from Little Rock.

10. Question. Had the loyal citizens of the Five Civilized Nations returned to the Indian Territory prior to the meeting of the council?

Answer. They had. They were all living at Fort Gibson and Tahlequah except the Choctaws and Chickasaws, who were in the Choctaw Nation.

11. Question. Did you hear the commissioners on the part of the United States submit to the Indians any points as those required to be embraced in the proposed treaty?

Answer. I was present and heard the commissioners make several addresses to the Indians.

12. Question. What points did you hear them present to the Indians as those which the Government of the United States would require to be embraced in the proposed treaty?

(Objected to by counsel for defendants for the reason that the record of the commission and the treaty constitute the best attainable evidence, and for the further reason that the testimony of this witness is irrelevant, incompetent, and immaterial on that subject.)

87 Answer. The Government required the Indians of each tribe to establish friendly relations among themselves and with the United States, and those in the Indian Territory, when called upon by the Government of the United States, were expected to compel the wild Indians and the Indians of their respective tribes to keep the peace and become good citizens. They were also required to consent to the abolition of slavery, and to agree that slavery should never again exist in the Indian Territory, and that certain Indian Territory lands should be set apart for friendly tribes of Indians in Kansas and elsewhere on terms to be agreed upon between the Government of the United States and the Indians, and they also desired that the Indian tribes should be formed into one consolidated government in the Indian Territory. I do not now remember any other points.

13. Question. Did these Indian delegates, to your knowledge, or did they not, assent to the proposition that a portion of the Indian country should be set apart for the settlement of other friendly Indians?

(Objected to by counsel for defendants for the reason assigned in the objection to the last preceding question, and for the further reason that it calls for an opinion of the witness upon a question of fact and also upon a question of law.)

Answer. The Indians did agree to allow a portion of their lands to be set aside for such purpose.

14. Question. Was a treaty embodying these points signed at Fort Smith in 1865?

(Objected to for the reason that the official records are the best attainable evidence.)

Answer. All the Indians who were present signed the treaty prepared there at the council.

15. Question. You do not understand me. I refer to the treaty embodying these points.

Answer. As I said before, the Indians there present disclaimed authority to enter into the final treaty, but agreed that commissioners, duly

authorized, should be sent to Washington to perfect a treaty embodying all that the Government desired.

16. Question. Well, then, that treaty was not signed at Fort Smith?

Answer. It was not, as I understand it.

17. Question. Why not?

(Objected to by counsel for defendants for the reason that this witness is incompetent to state the reasons for the action of the treaty-making power of the Indians, and for the further reasons assigned in the last two objections to interrogatories.)

Answer. The Indians claimed that they had been called to a council with the Government of the United States without having been notified for what purpose, and that they did not possess authority from their people to enter into a final treaty, but said that they would send delegates to Washington after conference with their different tribes.

18. Question. Was any treaty in fact signed at Fort Smith in 1865?

(Objected to for the reason that the official records and laws and treaties of the United States are the best attainable evidence.)

19. Question. Wait a moment; I will amend that question. Was any treaty in fact signed under your personal observation at Fort Smith in 1865?

88 Answer. A treaty of peace was signed by all the delegates who were present, or substantially all, I believe.

20. Question. What were your personal relations to, and what was your knowledge of, the Indian delegates who attended that convention?

(Objected to as incompetent, irrelevant, and immaterial.)

Answer. When I arrived at Fort Smith I found the Indians in the Indian Territory substantially destitute and starving, living almost entirely on beef. I went to their relief with a steamboat load of supplies, and found several thousand refugee Indians, representing several different tribes, encamped near Fort Gibson. I got these Indians together and talked with them, promised to aid them in any efforts they might make in agriculture, furnished them with seed corn and potatoes to plant, assured them that their property would be protected, issued stringent orders looking to that end, and in this way gained their confidence. I met and talked personally with all the headmen of all these tribes, and did everything in my power to encourage them to become self-sustaining. It was costing the Government a large amount of money to subsist them. There was no corn or provisions of any kind in the country except cattle. The rebel Indians were absolutely destitute and starving, and would have died but for the relief they received from the Government.

21. Question. What were your relations to these Indian delegates while the council was in session?

(Objected to as incompetent, irrelevant, and immaterial.)

Answer. I met all of these Indians, talked with them freely, tried to persuade them to consent to the wishes of the Government and to establish peaceable relations between the contending factions of their own tribes. I am sure I had their confidence so far as a commanding officer could have.

22. Question. While the council was in session, did these Indian delegates consult you as to the course they should take?

(Objected to for reasons assigned in last objection.)

Answer. Many of the delegates came to my office and talked with me as to what my interpretation was of their complying with the action of the Government.

23. Question. Did you learn from the commissioners on the part of the United States, and from the Indian delegates, the objects for which this treaty, which we call the "treaty of peace," was signed at Fort Smith?

(Objected to by counsel for defendants because any statements made by the commissioners to this witness are incompetent, irrelevant, and immaterial in this action.)

Answer. It was well understood by the commissioners that the Government was apprehensive that when the rebel Indians returned to their homes in a destitute condition they would be more or less demoralized, and that marauding parties would be organized among them to make war upon the white settlers throughout the West, and that the wild Indians would be incited to war; and it was the desire of the commissioners on the part of the Government to get these Indians to pledge themselves, not only to live in peace among themselves, but to aid the Government in compelling the wild tribes to keep the peace.

89 24. Question. Do you know whether this treaty of peace tended to preserve the peace among the Indians themselves, and between the Indians and the United States, until the treaty of 1866 was finally signed?

(Objected to for the reasons assigned in the objection to the last interrogatory.)

Answer. I am very sure that it had a salutary effect and caused a large majority of the Indians to become good citizens.

25. Question. Do you know who communicated to the Indians the wish of the Government for the meeting of this council and the making of the treaty?

(Objected to for the reasons assigned in the objection to the last preceding interrogatory.)

Answer. Early in August, 1865, there were a large number of Indians at Armstrong Academy, in the Choctaw Nation, who communicated with me their desire to secure transportation to Washington. I have before me a copy of a letter which I wrote to Governor Pitchlynn, the principal chief of the Choctaw Nation, and will read it. It is as follows:

"FORT SMITH, ARK., *Aug. 7th, 1865.*

"GOV. P. P. PITCHLYNN,
"*Principal Chief, Choctaw Nation.*

"SIR: An officer was appointed, and expected to start this morning, to meet you at Armstrong Academy on the 1st of September. He is quite sick this morning and will not be able to go. In consequence of the muster out of troops and the change now taking place in this command I have no other suitable officer to send. Lieut. Turner, late A. D. C. on Gen. Cooper's staff, is here as bearer of dispatches from Gen. Cooper and Gov. Colbert, and returns immediately to Armstrong Academy. I send by him letters to yourself, Gov. Colbert, and Gen. Cooper, which I think fully explains the matter.

"It is hoped a full delegation of all the Indian tribes will be here. I know you will do everything in your power to secure the cooperation and attendance of all the tribes who may be represented at Armstrong Academy. With the earnest hope that the approaching council will terminate in a permanent peace with all the nations, on terms satisfactory to all concerned, and with the assurance of my respect, I have the honor to be,

"Very respectfully, your obedient servant,

"CYRUS BUSSEY,
"*Brig. Genl., Comdg.*"

(Objection is here interposed by counsel for defendants, for the reason that the answer is not responsive to the interrogatory, and that the question and answer, so far as disclosed, are irrelevant, incompetent, and immaterial.)

The WITNESS (continuing his answer). I communicated to the Government the wish of the Indians who were assembled at Armstrong Academy to have a council. Certain Indians had applied to me for transportation to Washington, as I have already said. In view of the large number of tribes that would want to send delegates, and in view of the
90 expense of sending so many Indians to Washington, I represented to the Government that it would be better to have the council held at Fort Smith than to send the commissioners to Washington, which was agreed to. This correspondence with the Indians began about the 1st of July, 1855.

26. Question. At whose request did you communicate to the Indians this wish on the part of the Government?

Answer. I was notified, through General Reynolds, by the Commissioner of Indian Affairs, that if the Indians would convene at Fort Smith they would send commissioners there to confer with them.

27. Question. With what Indian tribes or nations did you communicate on this subject?

(Objected to for the reason that no official authority has been shown to have been lodged in General Bussey to open up negotiations with any Indian tribes, and for the further reason that it is incompetent, irrelevant, and immaterial.)

Answer. I have before me a letter-press copy of a letter dated September 12, 1865, written by me to the Hon. D. N. Cooley, Commissioner of Indian Affairs, which I will read:

"HEADQUARTERS FRONTIER DIVISION,
"*Fort Smith, Ark., Sept. 12, 1865.*

"Hon. D. N. COOLEY,
"*Commissioner of Indian Affairs.*

"SIR: I have the honor to transmit herewith, for your information, copies of correspondence marked A to S, inclusive, between myself, Winchester Colbert, gov. and prin. chf. Chickasaw Nation; P. P. Pytchlyan, principal chief of Choctaw Nation; Lewis Downing, actg. prin. chf. of Cherokee Nation, and Maj. Gen. J. J. Reynolds, comdg. Dept. of Ark., in relation to the appointment of a grand council of all the tribes in the Indian Territory for the purpose of meeting commissioners of the United States to negotiate a permanent treaty of peace.

"Also copies of correspondence marked AA to JJ, inclusive, between myself, Col. John A. Garrett, comdg. Ft. Gibson; Maj. Gen. Reynolds, comdg. Dept. of Ark.; Brig. Gen. D. H. Cooper, C. S. A., with accompanying papers (letter from Maj. Gen. Herron, Lt. Gen. Buckner, C. S. A., Brig. Gen. Stand Watie, C. S. A., Brig. Gen. Veatch, proceedings of Cherokee council, &c.), in reference to a temporary treaty of peace entered into between Lt. Col. A. C. Mathews, commissioner on behalf of the United States, and various Indian tribes in the Territory.

"Your special attention is called to this correspondence.

"In consequence of the delay and difficulty of communicating with the Department at Washington, I was compelled to act without instructions, except in one or two instances. I endeavored to represent what I believed to be the policy of the Government, and earnestly hope my action will meet your approval. With great respect, I have the honor to be,

"Your obedient servant,

"CYRUS BUSSEY,
"*Brig. Gen. Comdg.*"

I was authorized to get together all those Indians for the purpose of making this treaty, and my correspondence, as stated in the above
91 letter, was with Winchester Colbert, governor and principal chief of the Chickasaw Nation; P. P. Pitchlynn, governor and principal chief of the Choctaw Nation, and Lewis Downing, acting principal chief of the Cherokee Nation. I had written to these parties to communicate with all the tribes of Indians they could reach, and I learned from them that messengers were sent to various tribes inviting them to meet at Fort Smith. I stated to all these parties that the Government desired to establish a treaty of peace with the different tribes of Indians in the country, and the council met through my efforts as commanding officer at Fort Smith.

Mr. VALE. Did you know for what purpose the Government desired this meeting?

Answer. Beyond effecting a treaty of peace, I did not know what object the Government had in inviting them.

Mr. PAINE. That is, you did not know before the council met?

Answer. Yes; I did not know at the time I wrote this letter to the Commissioner of Indian Affairs. The council had not met then. In all my correspondence with the Indians I represented the Government, and asked the Commissioner to approve what I did.

Cross-examination of this witness was waived on the part of the United States, and also on the part of the Wichita and affiliated bands.

The examination of counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he does, to state it, says that he does not.

CYRUS BUSSEY.

Deposition of F. W. Hodge, for claimants, taken at Washington, D. C., on the 23d day of July, A. D. 1896.

Claimants' counsel, J. M. Wilson and others; defendants' counsel, C. C. Binney and others.

At the same place and on the same day, in the presence of the same counsel, F. W. HODGE was produced as a witness on behalf of the claimants, and, having been by me in like manner sworn, deposed and said that his name is F. W. Hodge; that his occupation is that of a Government ethnologist, and that he is employed in the Bureau of American Ethnology; that he is 32 years of age; that his place of residence is Garrett Park, Md.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in this cause, and that he is in no way related to any of the parties hereto.

And thereupon the said F. W. Hodge was examined by counsel for the claimant, and, in answer to interrogatories, testified as follows:

Direct examination by Mr. PAINE:

1. Question. Mr. Hodge, who wrote the article in the Seventh Annual Report of the Bureau of Ethnology relating to the Caddoan group?

Answer. Major Powell has the credit of preparing the entire article—that is, his name is signed to it—but he actually prepared only the introductory matter. The matter relating to the classification of the various linguistic stocks was prepared by Mr. H. W. Henshaw, assisted
92 by various members of the Bureau. In regard to the Caddoan stock, Mr. Henshaw prepared the matter relating to that the same as he did the other linguistic stocks, from notes made and prepared by the Rev. J. Owen Dorsey, so that the notes were practically furnished by Mr. Dorsey.

2. Question. Who prepared the article relating to the same subject in Johnson's Universal Encyclopædia?

Answer. That was prepared entirely by Mr. J. Owen Dorsey and signed by him.

3. Question. Which of these two articles was prepared first?

Answer. The one published in the Seventh Annual Report of the Bureau of Ethnology.

4. Question. What was the interval of time between the preparation of these two articles?

Answer. That would be impossible to say definitely. There does not seem to be any record in the Bureau as to the date of the transmission of the manuscript of the Seventh Annual Report to the Public Printer, but we have a record of the first proofs received. I made a note of that. The first proofs of the Seventh Annual Report were received on the 20th of April, 1891, but this particular paper of which you speak was prepared a good while before that. I remember quite distinctly that on returning from the field in Arizona and New Mexico, in the summer of 1889, I observed that this paper on the classification of the linguistic stocks had already been prepared.

5. Question. When was the article that appeared in Johnson's Encyclopædia prepared by Mr. Dorsey?

Answer. It was published in 1893, and was prepared in 1892 or 1893. It is impossible to tell just when, but there was not a very great lapse of

time between the time of the preparation of the article that was prepared for the encyclopedia and the date of its publication.

Cross-examination by Mr. WALKER (on behalf of the Wichitas and affiliated bands):

1. Cross-question. Where is Mr. Dorsey?

Answer. Mr. Dorsey is dead. He died in 1895.

2. Cross-question. Well, who was Mr. Dorsey?

Answer. He was an ethnologist in the Bureau of Ethnology, and his work was confined particularly to the Siouan tribes, to the Sioux themselves—or, as they are more properly called, the Dakotas—Omahas, and other Siouan tribes.

3. Cross-question. Are the Caddoan Sioux tribes?

Answer. No; they belong to a different stock.

4. Cross-question. Did Mr. Dorsey prepare the article in Johnson's Encyclopædia in his official capacity?

Answer. As I understand it, Major Powell, by reason of his well-known scientific standing, and owing to his general knowledge of the American Indians, was asked by the editors of the encyclopedia to prepare or to superintend the preparation of a series of articles relating to the North American Indians, which he did. The articles were arranged by linguistic stocks, and there was a general article on the Indians of North America, prepared by Major Powell himself, assisted by members of the Bureau. The preparation of these articles on the various linguistic stocks was assigned to the different members of the
93 Bureau whose knowledge best fitted them for the work. Mr. Dorsey, for instance, was assigned to the Siouan and Caddoan stocks, and also some of the linguistic stocks of the extreme Northwest, among the representatives of whom he had been.

5. Cross-question. Was the preparation of that article part of his official duties?

Answer. No; it was a private thing; but, as the Bureau of Ethnology is a part of the Smithsonian Institution, and as the Institution was established for the purpose of disseminating knowledge, Major Powell thought it eminently desirable to prepare this series of articles on account of their educational character; and, because the encyclopedia was one of standing, one that would have wide circulation, and the knowledge could best be disseminated in that way, he consented to do it. These articles are all of a popular nature.

6. Cross-question. You say that Mr. Dorsey was assigned to this work on the Caddoan stock because he was best informed on that subject. Was he acquainted with the Caddoan stocks from personal contact with the tribes or from literature?

Answer. I think he was acquainted with the Caddoan tribes more from the study of the literature on the subject than from personal contact with representatives of the different tribes. He may have seen and studied the Pawnees, who belong to the Caddoan stock, but of that I am not quite sure; and I also hesitate to say whether or not he had come in contact with any other Caddoan tribes. With the Sioux, however, he was intimately acquainted. He lived many years among them and understood the various dialects of their language perfectly. He was regarded

n authority on the Siouan tribes, and in the Bureau of Ethnology we ays looked to him for information regarding the Caddoan tribes.

ross-examination of this witness was waived on the part of the ted States.

he examination by counsel being concluded, the witness, in compli- with the rule of court requiring him to state whether he knows of other matter relative to the claim in question, and if he do, to state ays that he knows of nothing more on the specific line on which he been examined.

F. W. HODGE.

osition of Halbert E. Paine, for claimants, taken at Washington, D. C., on the 23d day of July, A. D. 1896.

laimants' counsel, J. M. Wilson and others; defendants' counsel, C. Binney and others.

t the same place, on the same day, and in the presence of the same nsel, HALBERT E. PAINE was produced as a witness on behalf of the mants, and having been by me in like manner sworn, deposed and , in answer to the preliminary questions required by rule of the court be propounded to him, that he has testified before in this cause, and that his answers to said questions are already on file herein.

And thereupon the said Halbert E. Paine was examined by counsel for the claimants, and, in answer to interrogatories, testi- as follows:

Direct examination by Mr. STANDLEY:

. Question. General, have you collected any proofs or documents of kind to be filed in this case as evidence in rebuttal?

Answer. I have.

2. Question. Please state what those documents are and file them with ur deposition.

Answer. I have collected certain documents, extracts from printed l written books and papers, and tracings from maps, which I now oduce and deliver to the notary to be filed as exhibits to this deposi- n and to be filed with my deposition in this case in the office of the rk of the Court of Claims. I also will deliver to the notary a list of se papers, to be added to my deposition and to be filed therewith in rt. The documents to which I refer number 163, and are numbered m 1 to 163, inclusive.

3. Question. Who made these extracts?

Answer. I made the extracts myself. They are all correct. There e some translations from the French into English, which translations I o made, and they are correct. There are many tracings and maps ong them, which tracings I also made, and they are correct. I have ned to italicise or underscore the parts of the testimony which seem me to be particularly relevant to this case. When my deposition is ed I request the notary to file these exhibits and list of documents.

Mr. VALE. Objection is made to the introduction of the exhibits ferred to because they are irrelevant, incompetent, and immaterial, and e not embraced within the terms of the stipulation entered into in this

case governing the introduction of evidence, and for the further reason that the same are not admissible as testimony in rebuttal.

Mr. BINNEY. Counsel for the United States concurs in the objection made by counsel for the Wichitas and affiliated bands, except so far as the stipulation is concerned, the United States not being a party thereto.

The WITNESS. I have not finished my answer. I have prefixed to each document a statement which I have signed. All of these statements are correct. The documents, written and printed books and papers, and the maps from which these extracts and tracings are made, are in the depositories named in the several statements prefixed to those documents, and will be produced on the trial if required by the defendants.

(The list above referred to is hereto attached, marked Exhibit A, and the documents and papers mentioned by the witness are also filed herewith, marked Exhibits H, E, P, Nos. 1 to 163, inclusive. Edmund Van Dyke, notary.)

Cross-examination by Mr. WALKER:

1. Cross-question. In your direct examination you stated that you underscored the portions which apply particularly to this case, or that you had attempted to do so. In Exhibit 9 I notice that you have underscored the word "Ouishitas," one of the several tribes mentioned in a list. Do you regard that as the only tribe of Indians of the number mentioned that is interested in this case?

Answer. It is possible that the Tonacaras and the Toayas may be interested in the case. I do not know how that is.

95 2. Cross-question. I notice among these exhibits a number of extracts in the French language. Who made those translations?

Answer. There is one there which shows upon its face that I did not make it. The rest of them I made.

3. Cross-question. There are a number of tracings and maps. What was your statement about them?

Answer. That they are correct tracings.

4. Cross-question. In making these tracings, did you include in them everything that was on the paper from which the tracing was made?

Answer. I aimed to include on these maps everything that in my judgment pertained to the case. I did not include everything.

5. Cross-question. In the exercise of that judgment, did you put upon those maps the name of every Indian tribe and village which appeared on the original?

Answer. Well, unless that Indian tribe or village related in some way to this case, it is not certain that I did.

6. Cross-question. Then you used your judgment in determining whether the name of the Indian tribe or village related to this case?

Answer. Yes; I had to do that.

Cross-examination on the part of the United States waived at this time.

Counsel for the Wichitas and affiliated bands and for the United States reserve the right to recall this witness for further cross-examination at any time, upon notice, before the printing of the record.

It was stipulated and agreed by and between counsel for the respective parties hereto that the signature of the witness Halbert E. Paine to

is above deposition be waived on account of his immediate departure om the city.

SHELLABARGER & WILSON,
For Claimants.

J. M. VALE,
For Wichitas and Affiliated Bands of Indians.
CHARLES C. BUNNEY,
For the United States.

I, Edmund Van Dyke, a notary public in and for the District of Columbia, certify that, at the time and place aforesaid, Cyrus Bussey, F. W. Hodge, and Halbert E. Paine, witnesses on behalf of the claimants in the above-entitled case, were each by me sworn, before any questions were put to them, to tell the truth, the whole truth, and nothing but the truth relative to the matters at issue in said cause; and that the answers of each of said witnesses were taken down by me in shorthand, and afterwards by me transcribed in typewriting, as above set forth, and that the deposition of each of said witnesses (except that of the said Halbert E. Paine, whose signature was waived by counsel for the respective defendants) was read over to and signed by them, before me, as follows: That of the said Cyrus Bussey on the 24th day of July, 1896, and that of the said F. W. Hodge on the 25th day of July, 1896.

In witness whereof I have hereunto set my hand and official seal this 25th day of July, A. D. 1896.

[SEAL.]

EDMUND VAN DYKE,
Notary Public, District of Columbia.

96 CLAIMANT'S EXHIBIT A TO DEPOSITION OF HALBERT E. PAINE.

List of papers referred to in the deposition of Halbert E. Paine, recalled, made exhibits thereto, and numbered from 1 to 163, inclusive.

No. 1. Extract from journal of commissioners, treaty of 1835.
No. 2. Extract from deposition of Lieutenant Beach.
No. 3. Extracts from report of De Mesieres.
No. 4. Extracts from H. H. Bancroft's work.
No. 5. Extracts from journal of Dodge's expedition.
No. 6. Extract from La Salle's statement.
No. 7. Extract from Tonti's statement.
No. 8. Extract from La Harpe's journal.
No. 9. Extract from La Harpe's journal.
No. 10. Extract from Du Pratz's history.
No. 11. Extract from Jeffery's history.
No. 12. Extract from Robin, 1775.
No. 13. Extracts relating to Fragoso's expedition.
No. 14. Extracts from Senate Ex. Doc. No. 13, Forty-eighth Congress, first session, pages 3 to 12, 30, 31, 32, 36, 44, 45, 46, 47, and map.
No. 15. Extract from Schoolcraft.
No. 16. Extracts from Account of Louisiana.
No. 17. Extract relating to Captain Sparks's expedition of 1806, and location of Co-ash-a-tay village, from account of Major Long's expedition.

No. 18. Extract from journal of Captain Marcy's expedition.
No. 19. Extract from Kennedy's Texas.
No. 20. Extract relating to location of Pawnee Picts, 1820, from account of Major Long's expedition.
No. 21. Extract from French's historical collections.
No. 22. Extract from deposition of Urbam Gebhart.
No. 23. Extract from American State Papers, Indian Affairs, volume 1, page 732.
No. 24. Tracing from Popple's map, 1741.
No. 25. Tracing from old American maps, volume 2, No. 21.
No. 26. Tracing from J. Palairet's map, 1759.
No. 27. Tracing from John Roque's map, 1761.
No. 28. Tracing from E. Bowen's map, 1772.
No. 29. Tracing from d'Amille's map, 1772.
No. 30. Tracing from John Mitchell's map, 1776.
No. 31. Tracing from Jeffer's map, 1777.
No. 32. Tracing from G. L. Le Rouge's map, 1778.
No. 33. Tracing from Pownall's map, 1794.
No. 34. Tracing from Des Bozieres's map, 1802.
No. 35. Tracing from Robin's map, 1805.
No. 36. Tracing from Arrowsmith and Lewis's map, 1812.
No. 37. Tracing from Pinkerton's map, 1818.
No. 38. Tracing from Mellish's map, 1818.
No. 39. Tracing from Dirwald's map, 1823.
No. 40. Extract from report of Indian agent, dated October 6, 1851.
97 No. 41. Tracing from Austin's map, 1830.
No. 42. Tracing from outline Indian localities, 1833.
No. 43. Tracing from Maj. S. H. Long's map, 1834.
No. 44. Tracing from E. F. Lee's map, 1836.
No. 45. Tracing from Young's map of Texas, 1836.
No. 46. Tracing from Austin's map of Texas, 1837.
No. 47. Tracing from Hunt and Randel's map, 1839.
No. 48. Tracing from outline, Hunt and Randel, 1839.
No. 49. Tracing from Kennedy's map, No. 1.
No. 50. Tracing from Kennedy's map, No. 2.
No. 51. Tracing from Melish's map, 1823.
No. 52. Tracing from new map of Texas, 1841.
No. 53. Tracing from Le Rouge's map, 1778.
No. 54. Extract from Dictionary of Indian Tribes.
No. 55. Tracing from State map of Texas.
No. 56. Tracing from H. S. Tanner's map, 1846.
No. 57. Tracing from R. Creutzbar's map, 1848.
No. 58. Tracing from Cordova map, 1848.
No. 59. Tracing from map in Adjutant-General's Office.
No. 60. Tracing from W. Darby's map.
No. 61. Tracing from Major Merrill's map.
No. 62. Tracing from P. Vandermaelen's map.
No. 63. Tracing from Creutzbar's map, 1856.
No. 64. Extracts from Breckinridge's work.
No. 65. Tracing from Mitchell's Atlas, 1776.
No. 66. Extracts from Moore's description of Texas.

No. 67. Extract from Martin's History of Louisiana.
No. 68. Extracts from notes, Marcy's expedition.
No. 69. Extract from report of Maj. S. H. Long, dated January 30, 1818.
No. 70. Extract from statement of John C. Carr, dated November 17, 1819.
No. 71. Extract from report of Superintendent of Immigration, November 12, 1839.
No. 72. Extract from statement of W. J. Raines, March 11, 1836.
No. 73. Extract from report of Capt. J. Brown, July 18, 1837.
No. 74. Extract from report of Indian agent, May 27, 1844.
No. 75. Extract from report of Commissioner of Indian Affairs for 1845.
No. 76. Extract from report of Commissioner of Indian Affairs for 1845.
No. 77. Extract from statement of P. P. Pitchlynn, January 19, 1846.
No. 78. Extract from report of P. M. Butler, Indian Commissioner, March 20, 1846.
No. 79. Treaty of Council Springs, May 15, 1846.
No. 80. Extract from file in Indian Office, July, 1846.
No. 81. Extract from report of Indian agent, October 27, 1846.
No. 82. Extract from report of Indian agent, May 16, 1847.
No. 83. Extract from report of Indian agent of June 22, 1847.
No. 84. Extract from report of Indian agent, dated July 15, 1847.
No. 85. Extract from report of Maj. George Andrews, September 3, 1847.
98 No. 86. Extract from report of Indian agent, dated September 14, 1847.
No. 87. Extract from report of Indian agent, dated October 12, 1847.
No. 88. Extract from report of Indian agent, dated March 2, 1848.
No. 89. Extract from report of Indian agent, dated March 16, 1848.
No. 90. Extract from report of Indian agent, dated April 28, 1848.
No. 91. Extract from report of Indian agent, dated June 15, 1848.
No. 92. Extract from report of Indian agent, dated August 10, 1848.
No. 93. Extract from report of Indian agent, dated August 10, 1848.
No. 94. Extract from report of Indian agent, dated September 14, 1848.
No. 95. Extract from report of Indian agent, dated December 26, 1848.
No. 96. Extract from report of Indian agent, dated March 7, 1849.
No. 97. Extract from statement of H. G. Catlett, dated May 12, 1849.
No. 98. Extract from report of Lieut. F. Hamilton, dated May 31, 1849.
No. 99. Extract from report of Maj. R. A. Arnold, dated June 18, 1849.
No. 100. Extract from report of Lieut. F. Hamilton, dated June 22, 1849.
No. 101. Extract from report of Indian agent, dated July 9, 1849.
No. 102. Extract from report of Indian agent, dated August 29, 1849.
No. 103. Extract from report of interpreter, dated October 9, 1849.
No. 104. Extract from report of Indian agent, dated November 2, 1850.
No. 105. Extract from statement of C. G. Todd, dated March 25, 1851.
No. 106. Extract from report of Indian agent, forwarded August 2, 1851.
No. 107. Extract from report of Indian agent, March 18, 1852.
No. 108. Extract from report of Indian agent, dated June 12, 1852.
No. 109. Extract from report of acting superintendent, dated June 14, 1852.
No. 110. Extract from report of Indian agent, dated October 8, 1852.

No. 111. Extract from report of Indian agent, supposed to have been made in 1853.
No. 112. Extract from report of Indian agent, dated November 22, 1853.
No. 113. Extract from report of Indian agent, dated September 16, 1854.
No. 114. Extract from report of Indian agent, dated September 20, 1854.
No. 115. Extract from report of Commissioner of Indian Affairs for 1856.
No. 116. Extract from report of Indian agent, dated December 27, 1856.
No. 117. Extract from report of Indian agent, dated March 6, 1857.
No. 118. Extract from report of Indian agent, dated April 30, 1857.
No. 119. Extract from report of Commissioner of Indian Affairs for 1858.
No. 120. Extract from report of Indian agent, dated December 19, 1858.
No. 121. Extract from order of Acting Commissioner of Indian Affairs, March 30, 1859.
No. 122. Extract from report of Superintendent of Indian Affairs, July 2, 1859.
No. 123. Extract from report of Superintendent of Indian Affairs, September 20, 1859.
No. 124. Extract from report of Commissioner of Indian Affairs for 1890.
No. 125. Extract from papers relating to Fort Smith council of 1865.
No. 126. Extract from report of Indian agent, dated October 1, 1863.
No. 127. Extract from report of Indian agent, dated August 20, 1877.
No. 128. Extract from report of Indian agent, dated August 28, 1871.
No. 129. Agreement with the Wichitas and other Indians, 1872.
No. 130. Extract from report of Commissioner of Indian Affairs for 1872.
99 No. 131. Extract from report of Commissioner of Indian Affairs for 1872.
No. 132. Extract from report of Indian agent, dated September 1, 1872.
No. 133. Extract from report of Capt. H. E. Alvord, October 10, 1872.
No. 134. Extract from report of Indian agent, dated September 1, 1873.
No. 135. Extract from report of Indian agent, dated September 1, 1874.
No. 136. Extract from report of Commissioner of Indian Affairs for 1875.
No. 137. Extract from report of Indian agent, dated August 21, 1876.
No. 138. Tracing from de l'Lisle's Atlas Nouveau.
No. 139. Extract from report of Indian agent, dated August 30, 1879.
No. 140. Extract from report of Indian agent, dated September 1, 1880.
No. 141. Extract from report of Indian agent, dated September 1, 1881.
No. 142. Extract from report of Indian agent, dated August 18, 1888.
No. 143. Extract from report of Indian agent, dated August 27, 1889.
No. 144. Extract from Senate Report No. 171, Thirtieth Congress, first session.
No. 145. Extract from report of Indian agent, dated September 16, 1890.
No. 146. Extract from report of Indian agent, dated August 10, 1891.
No. 147. Extract from report of Indian agent, dated April 19, 1860.
No. 148. Extract from Seventh Annual Report of Bureau of Ethnology.
No. 149. Extract from Johnson's Universal Cyclopædia.
No. 150. Extract from reports relating to Wichita population.
No. 151. Extract from American State Papers, Indian Affairs, volume 1, page 721.
No. 152. Extract from Gregg's Narrative, 1839.
No. 153. Extract from "The Pawnee Indian," by Dunbar.

No. 154. Extract from Journal of M. de Bienville's Voyage, 1700.
No. 155. Extract from report of Commissioner of Indian Affairs for 1870.
No. 156. Extract from deposition of Ta-wa-ko-nee Jim.
No. 157. Extract from deposition of H. P. Jones.
No. 158. Extract from deposition of Che-wa-stalk.
No. 159. Extract from deposition of A. J. Mears.
No. 160. Extract from deposition of James Mooney.
No. 161. Extract from letter of Stokes and Arbuckle, September 15, 1835.
No. 162. Extract from letter of Clark and Chouteau, September 6, 1816.
No. 163. Extract from Darby's description of Louisiana.

[Of the foregoing exhibits, Nos. 1, 3, 5, 13, 14, 17, 18, 20, 23, 71, 73, 75, 76, 77, 78, 79, 82, 83, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 101, 102, 103, 104, 105, 106, 110, 113, 114, 115, 118, 119, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 142, 143, 144, 145, 146, 148, 150, 151, 155, and 162 are omitted from this record by the order of the court, most of them being extracts from public documents which are the subject of judicial notice in the argument of the case, and others being extracts from, or duplicates of, papers previously filed as evidence by the defendant Indians and contained in this record.]

No. 40.

SPECIAL AGENCY FOR TEXAS,
ON PURDANALLAS, NEAR FREDERICKSBURG,
Oct. 6th, 1851.

SIR: I am this far on my way to the council grounds, on the San Saba, and have met here, seventy miles in advance of that point, several hundred Indians in almost a starved condition. The tribes and bands met here are Lapans, Comanches, Muscalaros, Apaches, Delawares, Cadoes, Toncoways, Wacoes, *Witchetaws*, and few of wandering tribes. * * *

I am, with respect, your mo. ob't svt.,

JNO. A. ROGERS,
Special Agent and Comr., etc.

LUKE LEA, Esq.,
Comr. of Indian Affairs, Washington, D. C.

100 No. 70.

Indian Office—Miscellaneous files.

NATCHITOCHES, *17th Nov., 1819.*

SIR: I have the honor of acknowledging the receipt of your circular letter and enclosure of the 17th Sept. last, and have only to observe that the order therein contained shall be implicitly obeyed.

The enclosed statement of Indian population in the Province of Texas I procured from an intelligent gentleman who has resided a considerable time in the Comanche Nation, and, from its coincidence with other statements in my possession, I believe it to be as nearly correct as under existing circumstances it would be possible to procure.

About fifteen days ago a detachment of about 250 Spanish cavalry, under the command of Don Ignatio Perez, surprised Nacogdoches, then occupied by a few of the followers of Dr. Long, who were nearly all made prisoners. The detachment then advanced to the Sabine River, burning and destroying all the settlements they found on the way, and afterwards divided themselves into small parties for the purpose of intercepting the Comanche traders, many of whom have fallen into their hands. Their main body, composed of about 1,000 men, is encamped on the Trinity River. It is presumed they intend to establish a post at Nacogdoches with the view of cutting off all intercourse between our traders and the Indian tribes within the province.

With great respect, I have the honor to be, sir, your obt. servt.,

JOHN C. CARR.

Hon'ble J. C. CALHOUN,
Secy. of War, Washington City.

No. 72.

Communication in report of commissioner for 1836.

WASHINGTON, D. C., *11 Mch., 1836.*

Hon. LEWIS CASS,
Secty. of War:

For the last five years I have had much communication with the Comanche Indians and their allies. They inhabit the country from lat. 33°, on the Red River, to the Rio del Norte, extending north to the road that leads from Saint Louis to S'ta Fe, south to the head waters of Trinity, Guadaloupe, Brazos, and Colorado rivers, of Texas, a country in length 600 miles and breadth from 250 to four hundred miles. The different tribes are Comanche, Kyawas, Towash or Southern Pawnees, Cados, Wacoes, and Skiddies. They number about thirty-five thousand, and can bring into the field about eight thousand warriors. Free as the buffalo themselves, they acknowledge no superior. Depredating upon the Mexicans of the interior states, ravaging their towns, carrying off large numbers of horses and mules, murdering their people, and taking prisoners and converting them into servants, naturally prompts these wandering hordes to look upon themselves as the most powerful of nations, which opinion the visits of our sick and exhausted troops among them, at different times, were not far from confirming.

I left their country on the 5 of December last for this place. They had then torn up the treaty made by the commissioners on the part
101 of the Govt., and said they had no treaty with us, and those that contracted had no right to enter into any such treaty. * * *

It is desirable to make a lasting peace with these people. They have from time to time murdered more than fifty of our people on the road from St. Louis to S'ta Fe and on the frontiers of Arkansas; and as Arkansas appears to be the place (and I hope a permanent home) for our friendly Indians, it is desirable, on their account also, that we cultivate a good understanding with these land pirates of the great West.

Respy., your most obt. servant,

AUSTIN J. RAINES.

No. 74.

CHICKASAW AGENCY, *May 27, 1844.*

SIR: * * * I have just heard that the two boys that were missing rom Trinity River, in the Republic of Texas, about the last of February r first of March ult. (at the time that their father, mother, and two chil-ren were murdered in the most shocking manner—the lady had her limbs ut off at her body) are now among the Wichitaw Indians, who live north f Red River and south of the False Washita, and are within the Chick-saw district of the Choctaw Nation. My information is certainly cor-ect. Capt. Ish-tie-i-u-ka-tubby, a Chickasaw in whom every confidence an be placed, brought in the information.

You will please excuse me for giving you my opinion of what ought o be done. It is this, that some discreet person should be sent there ith a tolerably strong command and induce those Indians to give up the prisoners and also the Indians who committed the murder, and 02 let them know distinctly that they will not be permitted to live in this country and go into Texas (a Republic that we are on the most riendly terms with) and commit murder and then flee into this for pro-ection.

I shall send a copy of this letter to the commanding general of this epartment, and also one to Maj. Wm. Armstrong, acting superintendent.

With high respect, I have the honor to be your mo. obed. servt.,

A. M. M. UPSHAW.

Hon. T. HARTLEY CRAWFORD,
Com. of Indian Affairs.

[Endorsement.]

Respectfully referred to the Secretary of War. The outrage was com-itted on Texas citizens, but by wild Indians, who are as much inhab-tants of that Republic as of our territory. The murderers should be elivered up to Texas and the lads liberated, and as they are now within ur limits, the matter is respectfully submitted.

T. HARTLEY CRAWFORD.

JUNE 26, 1844.

No. 80.

Names of the Indian delegation from the prairies of Texas.

hief Santa Anna and wife, Comanche.
" Cabah-mo, Comanche..... 3
" Reymond Castro, Lipan..... 2
" Jocko, Lipan.
" Placidore and wife, Tonkaway.
" 4 men and 3 women, Tonkaway..... 9
" Jose Maria and wife, Anadahko.
" Bincenti, Anadahko..... 3
" Tow-a-ash, 7 men, Cadoes and Ionies..... 8
" Ako-whe-dai, Keecheyes.

Chief Wah-dah-to, Keecheyes		2
" Yo-sa-quash, Wichitas.		
" Ish-ar-e-wah, Wichitas		2
" A-ka-quash, Wacoe.		
" Yshash-uts-have, Wacoe.		
" Kin-Sid-i-as-tets, Wacoe.		
" and wife Nancy, interpreter		4
" Keich-i-har-roque, Tiwaccarro.		
" Te-a-carra, Tiwaccarro		2
" Whe-tah-we-raht, Ponamahaw		1
Interpreter I. Shaw, Delaware.		
Do.	John Conner, Delaware	2
Do.	Jesse Chisholm, Cherokee	1
	Mariani, Spaniard bo't of Comanches	1
Total		4

WASHINGTON CITY, *July 17th, 1846.*

R. S. NEIGHBORS.

103 [Enclosure.]

WASHINGTON, D. C., *July 24th, 1846.*

W. MEDILL, Esq.,
Commr. Indian Affs.

SIR: Enclosed you will find a list of the chiefs that I think should have medals of a large and small size; also an estimate of expense hom of Indian delegation. I consulted Mr. Wilson, sec. to commissioners, and he is of the opinion that the estimate is not too large.

I would state, for your information, that by reference to any late map of Texas you will see that the route from Natchitoches, La., to Torrey's Trading House, Texas, a distance of 280 miles, is through a settled country, passing Fort Jesup, La., Gaines' Ferry, Sabine, San Augustine, Nacogdoches, Fort Houston, on Trinity River, &c., and from there through a thinly settled country to the Trading House, which is 25 miles above the Falls of Brazos. * * *

Very respectfully, your ob't servant,

ROBT. S. NEIGHBORS.

[Enclosure.]

GLOBE HOTEL, *Washington City, July 23d, '46.*

Major NEIGHBORS: * * *

The chiefs to whom I think 'twould be proper to give large medals are as follows, viz:

Santa Anna, Cabahmo, Reymond Castro, Placidore, Jose Maria, Tow-ash, A-ko-whe-dai, Yo-sa-quah, A-ka-quash, I-sash-ketch-haive, Keech-i-carroque, Pa-ha-en-ka, and the uncle of Nancy.

To the following small medals, viz: Biscenti, Jocko, Wah-dah-to, Ish-ar-ro-wah, Te-ac-car-ro, and one Yonk-a-way Capt.

Respectfully, yours,

THOMAS J. WILSON.

[Enclosure.]

Estimate of funds for return of the delegation of Prairie Indians from Washington City to Torry's Trading House, on the Brazos River, Texas, * * * $2,809.40.

* * * * * * *

R. S. NEIGHBORS.

To W. MEDILL, Esq.,
Commr. Ind. Affs., Washington, D. C.

[Enclosure.]

W. D. O. I. A., *24 July, 1846.*

SIR: With the approbation of the Secretary of War, you have been detailed to accompany the Texas Indians, now in this city, on their return home, via Natchitoches, as disbursing agent. * * *

Very, &c.,

W. M.

SAMUEL HEWES PORTER, Esq.,
Washington, D. C.

104 No. 81.

CITY OF AUSTIN, TEXAS,
Octo. 27th, 1846.

W. MEDILL, Esq.,
Commr. of Ind. Affs.

SIR: * * * The Wacos, Wichitas, and Keechies have stolen quite a number of horses on our northern frontier, but have spilled no blood. * * *

I have the honor to be, very respectfully, your obt. servant,

R. S. NEIGHBORS.

105 No. 84.

AUSTIN, TEXAS, *July 15th, 1847.*

SIR: * * * The Wacos, Tah wac carros, and Witchitas have thus far observed strictly the agreement made with me, as reported in my last, and, within my knowledge, no depredations have been committed by any of these tribes since that date. I feel every assurance, when the presents now promised them are distributed, and the few misunderstandings settled, which it is hoped will be accomplished at the contemplated council, our Indian relations on this frontier will be on as firm a basis as could be reasonably expected with those wild and uncivilized tribes. * * *

I have the honor to be, very respectfully, your obt. servt.,

ROBT. S. NEIGHBORS,
Special Indian Agent.

To Col. W. MEDILL,
Comr. of Indian Affairs, Washington, D. C.

No. 85.

[Extract.]

FORT WASHITA, C. N.,
September 4, 1847.

GENERAL: * * * Contrary to the impression which is generally entertained, I apprehend more from the erratic and trading Indians in the fall, winter, and early spring than at any other time of the year. * * *

The Indians I designate as "erratic and trading" who visit this post are parties of the Shawnee, Kickapoo, and Delaware tribes, together with renegade Cherokees. The Caddoes, Wichetaws, Kuchyes, Waccos may be added to them. The Delawares are, as far as I can learn, the only band whose fidelity and friendship can be depended upon. * * *

I am, sir, with great respect, yr. ob. servt.,

(Signed) GEO. ANDREWS,
Bt. Maj., Comg. Post.

Brig. Gen. R. JONES,
Adjt. Genl. U. S. A., Washington, D. C.

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No. 95.

[Enclosure.]

U. STATES SPECIAL IND. AGENCY,
Torrey's Trading House, Dec. 26, 1848.

Col. W. MEDILL,
Comr. of Ind. Affrs., Washington, D. C.

SIR: * * * In accordance with your order to "ascertain what would satisfy the Wichitas," I have endeavored to see them on several occasions, but have failed. During the whole fall they, as well as the Waccos and Keechies, have been absent from their villages, under the pretext of hunting. They have been, most of the time, on the head waters of Red River and in the neighborhood of the Wichita Mountains.

107 The only act of hostility attributable to them is horse stealing. There has been quite a number of horses stolen from the upper settlements on the Trinity River and from Capt. Fitzhugh's company of rangers stationed at that point, which stealing is charged to these bands. * * *

I have the honor to be, very respectfully, your obt. servant,

ROBT. S. NEIGHBORS,
U. States Special Ind. Agent.

No. 98.

FORT GRAHAM, TEXAS, *May 31st, 1849.*

MAJOR: I have the honor to state for the information of the Brevet Brigr. Genl. Commanding that Aquaquash, chief of the Wacoe Indians, arrived at this post on the 25th inst. with a small portion of his tribe. He informed me that he had succeeded in making the Wichitas deliver

up to him a portion of the horses they had stolen from citizens of this state. This he did in accordance with an agreement made at Camp Thornton (Towash village) during the month of March last, and which the general doubtless remembers. He also informed me that a small portion of his tribe, together with a large party of Taukarroos, were not far behind, were bringing in the stolen horses, together with Tad-[illegible] a-da, chief of the Wichitas, and a few of his warriors. About a week before I was informed by Chadeas, a chief of the Wacoes, that a band of Caddoes and Delawares had attacked the Wichitas' village, killed seven of their number, and wounded several more. The Caddoes and Delawares captured nearly one hundred head of their horses, together with some thirty stolen from the citizens. I have been informed that the horses were taken to Fort Washita. The horses that Aquaquash recovered were brought in on the 27th inst., accompanied by nearly one hundred Wacoes, Towakarros, and Witchitas. * * *

I had, at his request, a talk with the great Witchita chief Tad-a-da. He has promised in future to be friendly, and to do all in his power to prevent his tribe from stealing horses.

I am, Maj., very respectfully, your obt. servt.,

F. HAMILTON,
1st Lieut. 2d Dragns., Comdg.

To Maj. GEORGE DEAS,
A. A. Genl. 8th M. Dept., San Antonio, Texas.

No. 99.

FORT WORTH, WEST FORK TRINITY RIVER,
NORTHERN FRONTIER OF TEXAS,
June 18th, 1849.

SIR: In the absence of the Indian agent I have, by authority of army regulations, acted in that capacity, and have the honor to report to you that Neo-cho-se-ras, chief of the Tah-wah-carros, and Gideos, with two other chiefs of the Wicheta tribe, with a party of some hundred, are now visiting me. This is the party who lately came in to Fort Graham (on the Brazos, distant 60 miles) under Aqui-quosh, the Wacoe chief, bringing and delivering up some thirty-five horses and mules which they had taken from the Wichetas. These horses, &c., had been stolen from citizens by the Wichetas within the last year or two. I thought it best to treat these Indians hospitably, and as they had had much trouble in recovering these horses and had received no reward, I took the responsibility to purchase some tobacco and bread and give them as presents. I hope this will meet with your approval and that you will send me instructions how to treat with them hereafter. * * *

I have the honor to be, y'r most obt. svt.,

R. A. ARNOLD,
Bvt. Majr., 2d Dragoons, Commanding, and Acting Indian Agt.

SUPERINTENDENT INDIAN AFFAIRS,
Washington, D. C.

No. 100.

FORT GRAHAM, TEXAS, *June 22d, 1849.*

SIR: * * * Since this post has been established it has been visited by parties of the Delawares, Shawnees, Caddoes, Ionies, An-a-dah-kos, Lipans, Keechis, Wacoes, Wichitas, and Tow-a-harroes at different times. * * * Aquaquosh, chief of the Wacoes, visited this post on the 25th ult. and remained here nearly two weeks. I had frequent talks
109 with him. He has, as you know, always been friendly with the whites, and has, moreover, been instrumental in forcing the Wichitas to deliver at this post a number of horses they had stolen. * * *

I am, sir, very respectfully, your obt. servt.,

F. HAMILTON,
1st Lt., 2 Drgs., Comdg. Post.

To ROBERT S. NEIGHBORS,
U. S. Special Indian Agent, Fort Graham, Texas.

No. 107.

FORT GRAHAM, TEXAS, *March 18, 1852.*

SIR: * * * The Comanches, after mature deliberation, avowed a determination to take new and higher ground, as they represented it, than they had ever before taken. They say that most of the depredations on our frontiers are committed by the Wichitas and the Comanches north of the Red River, and they admit that most of the southern or friendly Comanches had been "blind" to these invasions; but they avow that hereafter they will stop such hostile parties and compel their
110 return, or report them immediately to the Govt.; that from the Brazos west the Comanches will assume this duty, and from the Brazos east it would be done by the Wacoes and their associates; that on their return to their people they will communicate this resolution and take immediate action to carry it into effect.

I have the honor to be, very respectfully, your obedt. servt.,

JESSE STEM,
Spl. Agt. for the Indians of Texas.

No. 108.

FORT BELKNAP, TEXAS, *June 12, 1852.*

SIR: As reported, under date of May 12 last, I have been making a tour in the Indian country and visiting the Indian villages on the Brazos. I find that the Wichita Indians, formerly of Texas, and associates of the Wacoes and Towaccawos, have recently been making very frequent depredations on the frontiers of Texas below this, and are now constantly engaged in stealing horses and passing through this vicinity on their way to their homes in the Wichita Mountains, beyond Red River.

These depredations are recently becoming so frequent, two or three small parties having passed along here with stolen horses since I left Fort Graham, that I have conceived it to be my duty to call on the military for a party of dragoons for the purpose of visiting the Wichitas at

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ir homes, recovering the stolen property in their possession, and taking
ie hostages, or other security, for the future. I apprehend no occa-
n to resort to force.

I am, very respectfully, your obt. servt.,

JESSE STEM, *Spl. Agt., &c.*

To Hon. L. LEA,
Comr. Ind. Affrs., Washington City, D. C.

No. 109.

Estimate of the different tribes of Indians in Texas.

RECAPITULATION.

	Souls.	Warriors.
rthern Comanches, including—	18,950	3,790
Kiowas	1,050	190
outhern Comanches	495	100
ipans	688	140
addoes, Anadakos, and Ionies	547	110
awaccawos, Wacoes, Keechies, and Wichitas	300	60
onkawas	750	150
lescaleros		
	22,780	4,540

FFICE OF THE TEXAS SUPERINTENDENCY,
San Antonio, 14th June, 1852.

GEO. T. HOWARD,
Actg. Supt. Texas Indians.

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No. 111.

No date, 1853.

o the Hon. GEO. W. MANYPENNY,
Commissioner of Indian Affairs, Washington, D. C.

SIR: * * * Having taken considerable pains to get information
ith regard to those associated bands of wild Indians, the Wacoes, Wishi-
aws, Towacarres, and Keechies, I submit it to the Department for what
is worth. These bands, although small in numbers, are more trouble
nd commit more depredations upon the people of Texas than all the
ther bands that roam through her territory, extending their predatory
xcursions down into the settlements as far as the San Antonio River;
travelling mostly on foot, avoiding the military posts, they swoop
12 down upon the settlers and drive off their animals with impunity,
not even sparing their enemies, the Delawares and other Indians
riendly to the whites. This leads to frequent hostile meetings, and
whilst with me a party of Delawares brought in the bleeding scalps of
ome Wacoes who were caught stealing their horses. Were proper steps
aken by the Government of the U. S. to settle these Indians upon a
eaceful basis, which may be easily done, Texas would be relieved from
early all Indian troubles, and the General Government be saved
housands.

Respectfully, your mo. obdt. servt.,

HORACE CAPRON,
Special Agent for Texas Indians.

No. 112.

SAN ANTONIO, TEXAS, *November 22d, 1853.*

SIR: I have the honor to inclose a report of Special Agent Hill, in answer to your communication, inclosing to Jesse Stem reports, &c., in regard to the Wacoes and Wachita Indians, which I would commend to your consideration.

These Indians left Texas immediately after that difficulty, and have not returned since. Our frontier has consequently been relieved from the worst and most thieving bands of Indians now in the United States, and the beneficial results to the frontier citizens of Texas since they were attacked by Maj. Sibley is clearly perceptible. Although this is the case, it is now time that they should be located and provided for; but I can not see any beneficial results likely to grow out of their return to Texas.

I would therefore respectfully suggest that measures be taken at as early a day as practicable by the Department to endeavor to procure a location for these small tribes on the Indian Territory, east of Red River, and that all the necessary means be adopted to induce them to remain permanently in that section of country. The Keechis, Wacoes, Tahwaccawos, and Wichitas are closely allied and associate the same as one tribe, and should properly occupy the same country or territory.

I do not approve of paying for the property taken from them, from the fact that they are notorious thieves and had no property but what they had stolen from some one else, and in that attack they have been taught a lesson that has so far proved beneficial; and now to give them indemnity will only encourage them to commence their old practices.

Very respectfully, your obt. svt.,

ROBT. S. NEIGHBORS,
Special Agent, &c.

Hon. G. W. MANYPENNY,
Comr. Indian Affairs, Washington City, D. C.

No. 116.

[Enclosure.]

BRAZOS AGENCY, TEXAS, *Dec. 27th, 1856.*

SIR: * * * On the 26th inst. we were visited by ten camps of Wichita Indians, who came in for the purpose of expressing their
113 sincere friendship for the Indians of the reserve. They show a strong desire to settle here and come under the rules and regulations of this agency. * * *

Your obdt. servant,

S. P. ROSS,
Spcl. Agent Tex. Indians.

To Maj. R. S. NEIGHBORS,
Supervising Agent Texas Indians.

No. 117.

WASHINGTON, D. C., *March 6th, 1857.*

SIR: * * * That country, for a number of years, has been a general ndezvous of horse thieves, viz, Wichitas, Keechies, Kickapoos, and negades from other tribes, who have carried on a very lucrative trade ith Indians and white traders, from the Creeks and Cherokees, and hite traders from Arkansas, and a large portion of the horses stolen om Texas have been disposed of in this very territory. * * *

Very respectfully submitted.

Your obdt. servt.,

ROBT. S. NEIGHBORS,
Supervising Agent Texas Indians.

Hon. GEO. W. MANYPENNY,
Comr. of Indian Affairs, Washington, D. C.

No. 120.

SAN ANTONIO, TEXAS, *December 19th, 1858.*

SIR: I have the honor to acknowledge the receipt of your letter of the th in relation to the letter of Col. Elias Rector, in regard to the Wichita ndians, and, in answer thereto, would state that the information received y him through F. P. Page is false from beginning to end, as no such missaries as those spoken of have ever been sent by me to the Wichitas; n the contrary the Wichitas have, on several occasions within the last hree years, been refused permission by me to emigrate to Texas and ettle on the reserve at Brazos Agency, and in no instance have either yself or the special agents under my control interfered, either directly r indirectly, with the Indians in the southern superintendency, except o report some cases of horse stealing to the commanding officer at Fort Arbuckle, or to Col. Cooper, agent of the Choctaws and Chickasaws. * * *

Very respectfully, your obt. svt.,

ROBT. S. NEIGHBORS,
Supervising Agent Texas Indians.

Hon. J. W. DENVER,
Commr. Indian Affairs, Washington, D. C.

114

No. 147.

WITCHITA AGENCY, L. D., *April 19, 1860.*

SIR: By order of Supt. Rector, of the southern superintendency, your circular, dated Nov. 17, 1859, directing that the proposition for surveying and allotting to them in severalty so much of their land as was necessary for their actual occupancy and cultivation, was submitted to the chiefs and headmen of the several bands who compose this agency in council early in January last.

Having had the subject under consideration for over three months, and again having assembled in council, they request me, as their agent, to say—

That there are nine different bands and parts of bands now resident in this district, viz, Caddos, Anahdahkos, Comanches, Tonkahuas, Ionies, Keechies, Witchitas, Wacos, and Tahuacarros. Of these only three bands

claim any right to speak in the premises, viz, Witchitas, Wacos, and Tahuacarros. These three bands are composed of a people having the same habits and speaking the same language, and claim to have had the same origin.

They say that this country (by which they mean all that country lying between the Red River and the Canadian River from the mouth of the False Washita on river to a point due north of the same on the Canadian as its eastern boundary and as far west as the west end of the Witchita Mountains) is exclusively their own; that they have held it in possession and cultivated as much of it as was necessary for their support from time immemorial; that they used to be powerful, and kept intruders, such as the Comanches and others, off of it; that they have by long wars
115 become enfeebled, and have sought and obtained the favor and protection of the United States Government; that they do not think it would be just in so powerful a Government to take and distribute their country to a people who had warred upon them without first paying for it; that in all the treaties which they have held with their Indian neighbors, whether civilized or wild, roving bands of the prairies, this right has never been disputed. * * *

Very respectfully, your obt. srvt.,

S. A. BLAIN,
U. S. Agent for Witchitas and others, L. D.

Hon. A. B. GREENWOOD,
Comr. Indian Affairs, Washington, D. C.

No. 125.

[From package marked "Papers relating to council held at Fort Smith, 1865."]

ADDRESS OF THE COMMISSIONERS.

Brothers: After considering your speeches made yesterday, the commissioners has decided to make the following reply and statement of the policy of the Government.

Brothers: We are instructed by the President to negotiate a treaty or treaties with any or all of the nations, tribes, or bands of Indians in the Indian Territory, Kansas, or of the plains west of the Indian Territory and Kansas.

The following-named nations or tribes have, by their own acts, by making treaties with the enemies of the United States, at the dates hereafter named, forfeited all right to annuities, lands, and protection by the United States.

The different nations and tribes having made treaties with the rebel government are as follows, viz:

The Creek Nation, July 10th, 1861; Chocktaws and Chickasaws, July 12th, 1861; Seminoles, August 1st, 1861; Shawnees, Delawares, Witchitaws and affiliated tribes, residing in leased territory, August 12th, 1861; the Comanches of the Prairie, Aug. 12, 1861; the Great Osages, Oct. 2d, 1861; the Senecas, Senecas and Shawnees (Neosho Agency), Oct. 4th, 1861; the Quapaws, Oct. 4th, 1861; the Cherokees, Oct. 7th, 1861.

By these nations having entered into treaties with the so-called Confederate States, and the rebellion being now ended, they are left without any treaty whatever, or treaty obligation, for protection by the United States.

Under the terms of the treaties with the United States and the law of Congress of July 5th, 1862, all these nations and tribes forfeited and lost all their rights to annuities and lands; the President, however, does not desire to take advantage of, or enforce the penalties for, the unwise actions of those nations.

The President is anxious to renew the relations which existed at the breaking out of the rebellion.

We, as representatives of the President, are empowered to enter into new treaties with the proper delegates of the tribes located within the so-called Indian Territory and others above-named living west and north of the Indian Territory.

116 Such treaties must contain substantially the following stipulations.

1. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and with the United States.

2. Those settled in the Indian Territory must bind themselves, when called upon by the Government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians in the Territory, and with the United States.

3. The institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for.

4th. A stipulation in the treaties that slavery or involuntary servitude shall never exist in the tribe or nation, except in punishment of crime.

5th. A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes now in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by Government, or such as may be fixed by the Government.

6th. It is the policy of the Government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one consolidated government, after the plan proposed by the Senate of the United States in a bill for organizing the Indian Territory.

7th. No white person, except officers, agents, and employés of the Government, or of any internal improvement authorized by the Government, will be permitted to reside in the Territory, unless formally incorporated with some tribe according to the usages of the band.

Brothers: You have now heard and understand what are the views and wishes of the President; and the commissioners, as they told you yesterday, will expect definite answers from each of you upon the questions submitted.

As we said yesterday, we say again, that in any event those who have always been loyal, although their nations may have gone over [to] the enemy, will be liberally provided for and dealt with.

The foregoing address bears the following indorsement:

We propose to renew the treaty stipulations that existed previous to, or at the breaking out of, the rebellion, so far as regards the annuities.

The Gov'm't will insist on purchasing a portion of their lands for the settlement of friendly Indians.

No part of any moneys expended by the President in providing for the relief of destitute Indians, which were reduced to want on account of their friendship to the Gov'm't, will be refunded.

A stipulation of general amnesty must be incorporated, and no individual shall be proscribed, or any act of confiscation or forfeiture passed, against those who remained friendly to the U. S.; but they shall enjoy equal privileges with the other members of the nations.

REPLY OF THE CHOCTAW AND CHICKASAW COMMISSIONERS.

FORT SMITH, ARK., *19th Sept., 1865.*

The committee on the part of the Choctaws and Chickasaws reply to the propositions made on the part of the United States as the basis of new treaties:

That we are pleased to learn that you propose to renew your previous relations with us, and we are willing to go into negotiations for
117 the making of a new treaty with the United States, and, as a basis of this new treaty, accept Art. 1st and 7th.

In reference to the requirements of the 2nd article, we desire to say that we wish, as far as possible, to avoid coming in conflict with our red brethren, should any of them be so unfortunate as to get into conflict with the United States authorities. We are willing to guarantee our influence in favor of peace, in all its bearings, with our red brethren, and will not object to any of our citizens volunteering for service, in any war in which the United States may become involved, for the aiding of the United States.

We are willing to enter into negotiations for the settlement of all the points contained in the 3d and 4th articles.

On certain terms, on which we can doubtless agree with you, we are willing to admit the settlement of other tribes within our territory, as proposed in the 5th article.

We are willing to submit the territorial bill, referred to in the 6th article, for the consideration of our respective councils, and for this purpose we request a copy of that bill for the principal chief of the Choctaw Nation and for the governor of the Chickasaw Nation.

We accept art. 7th, and are willing to have the provisions thereof incorporated into the treaty.

We are also willing to incorporate a provision that no individual shall be proscribed, or any act of forfeiture or confiscation passed, against those who remained friendly to the U. S., and that they shall enjoy equal privileges with other members of the nation.

R. M. JONES,
Chairman of the Committee of Choctaw and Chickasaw Comrs.

[From package marked "Papers relating to council held at Fort Smith, 1865."]

FORT SMITH, ARK., *Sept. 16th, 1865.*

The honorable commissioners on the part of the United States.

GENTLEMEN: The Southern Seminoles have considered the ultimate propositions so far laid down by you, and cordially assent to all but the third and sixth.

11154

We know the abolition of slavery to be a fact throughout the United States. We are willing to recognize that fact by the proper acts of our council.

But the proposition to "incorporate" the freed negro with us, on an "equal footing with the original members" of the Seminole tribe, is presented to us so suddenly that it shocks the lesson we have learned for long years from the white man as to the negro's inferiority. We honestly think that both the welfare of the Seminole and the freed negro would be injured, if not destroyed, by such "incorporation." The emancipated black man must, of necessity, be "suitably provided for." Such provision requires time and consultation as to how it shall best be done, and we consequently beg the indulgence of further time before we decide. We, however, bind ourselves to agree, in good faith, to any wise plan which shall be deemed just and equitable to all parties.

The proposition touching the consolidation of all the tribes and fragments of tribes into one government is one of so great moment
118 and interest to us that we must request time for its due consideration. The plan proposed by the United States Senate may be a good one. We have not seen it, but would like to do so and lay it before our council, so as to enable our people to determine thereupon. We will, however, cheerfully agree to any plan which may be adopted by the other nations of the Indian Territory and sanctioned by the President of the United States.

Our country is a small one and remote. It will neither bear a location within its borders of a numerous or an unruly tribe.

Our course during the past four years has been what we considered an honest one. We were in earnest in pursuing it. We shall be equally earnest in fulfilling all relations which we may enter into in this convention, or hereafter in others, with the United States; and we here announce to you and the Government that you may discover that a once earnest enemy can become a better citizen, a more faithful liege, than those who make pretense to fealty on account of interest.

We beg to assure you that we desire nothing more ardently than peace with the United States, peace with our brother Indians, peace among ourselves.

Very respectfully, your obt. servts.,

JAMES FACTOR (his x mark),
FOOSHATCHEE COCHUCME (his x mark),
GEORGE CLOUD (his x mark),
PA-SUCAH YOHOLA (his x mark),
JOHN BROWN (his x mark),

Seminole Delegates.

We, the delegation on the part of the loyal element of the Choctaw people, came here with the expectation of meeting our Southern brethren here, and to see what sort of a treaty would or could be made with the Government of the United States. We are not authorized to make, sign, or enter into any treaty stipulations with the Government of the United States on the part of the Choctaw Nation, but were selected by the agent for the Choctaw and Chickasaw Indians, by and with the advice and consent of the loyal portion of the Choctaw people, to represent and show to the commissioners on the part of the United States that there are some

loyal Choctaws yet, in order that we might not be forgotten or overlooke
by the commissioners, but that we might be properly provided for, &
In answer, therefore, to your propositions to the several tribes of India
we say that the 1st, 2d, 3d, 4th, 5th, and 6th articles meet our approv
We respectfully suggest that the 7th article may be modified or chang
to read thus:

No white person, except officers, agents, and employés of the Gover
ment, or of any internal improvement authorized by the Government
the United States; also, no person of African descent, except our form
slaves, or free persons of color who are now or have been residents
the Territory, will be permitted to reside in the Territory, unless
mally incorporated with some tribe, according to the usages of the la

WM. S. PATTON.
ROBT. B. PATTON

119 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 21.—Tracing from De l'Isle's map, 1700.

(Filed Apr. 21, 1896. Court of Claims.)

120 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, on his said
deposes as follows:

The annexed map is an accurate tracing from G. De l'Isle's map,
lished in Paris, France, in 1700, being No. 5, in a volume of old Am
can maps now in the Library of Congress, and accessible, for inspec
and production in court, to all the attorneys and counsel in this ca
The annexed tracing contains everything shown on said map perti
to this cause.

H. E. PAIN

Subscribed and sworn to before me this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Publi*
(Here follows diagram marked p. 121.)

122 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 22.—Tracing from De l'Isle's map, 170

(Filed Apr. 21, 1896. Court of Claims.)

123 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as foll
The annexed map is an accurate tracing from a map published at
France, in 1703, by De Lisle, geographer of the Royal Academy.

De l'Isle. Paris, 1700.
Old American Maps, No. 5.
Library of Congress.

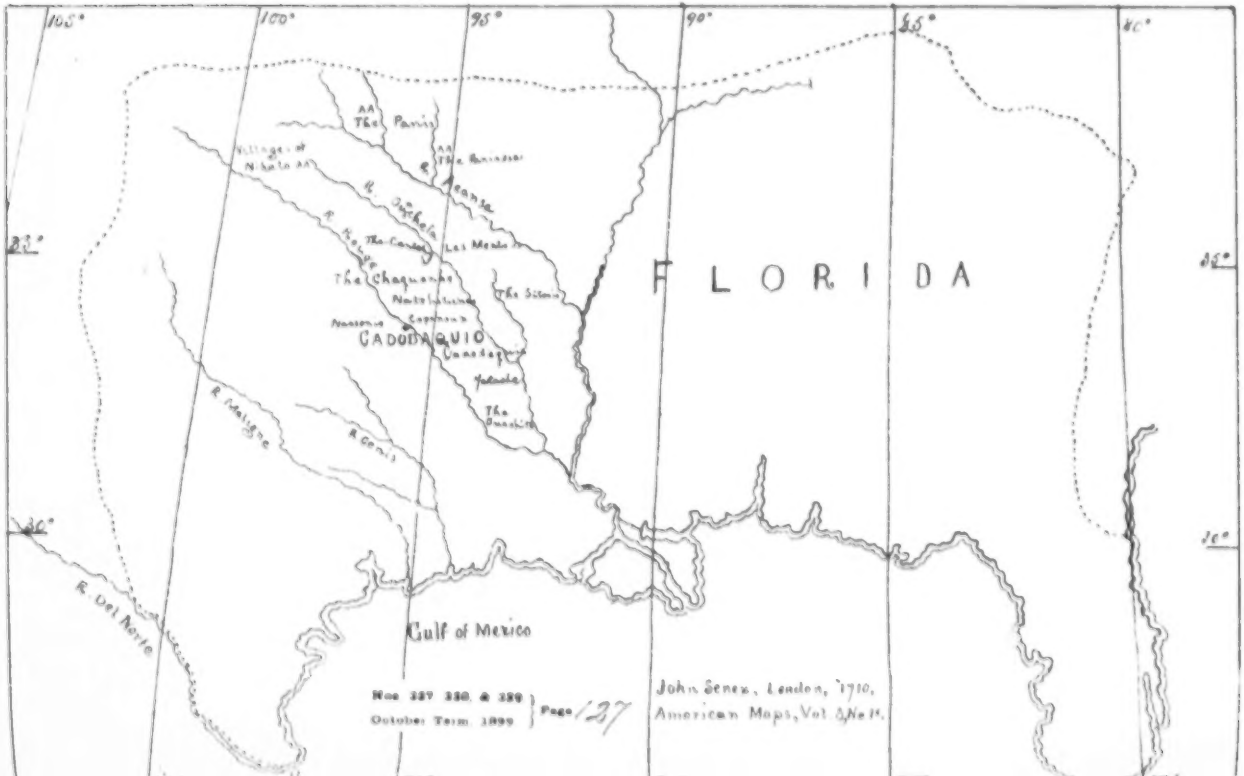
Nos. 237, 238 & 239.
October Term, 1899. } Page 124

35°

30°

G. De l'Isle, Paris, 1708. Old Maps of America, Vol. I No 9. Library of Congress.

Ferro Longitude, Greenwich in brackets



Nos 329 330 & 329
October Term 1899
Page 127

John Senex, London, 1710.
American Maps, Vol 3 No 15.

map is No. 8 in Volume 1, of "Old Maps of America," now in the Library of Congress, and is accessible for inspection and production in court to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 124.)

125 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 23.—Tracing from John Senex's map, 1710.

(Filed Apr. 21, 1896. Court of Claims.)

126 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from the map of John Senex, published in London, England, in 1710, and being No. 14 in volume 3, of the "American Maps," now in the Library of Congress, accessible for inspection and production in court to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to the case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 127.)

128 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 24.—Tracing from H. Moll's map, 1711.

(Filed Apr. 21, 1896. Court of Claims.)

129 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine having been duly sworn, deposes as follows: The annexed map is an accurate tracing from a map of H. Moll, published in London, England, in 1711, being No. 14 in volume 1 of the Old American Maps now in the Library of Congress, and accessible, for

inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing contains everything shown on said map pertinent to the case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 130.)

131 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.
No. 18932.

Claimants' evidence, No. 25.—Tracing from H. Moll's map, 1715. (Dedicated to Lord Somers.)

(Filed Apr. 21, 1896. Court of Claims.)

132 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from H. Moll's map dedicated to Lord Somers, published in London, England, in 1715. Said map is now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 133.)

134 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.
No. 18932.

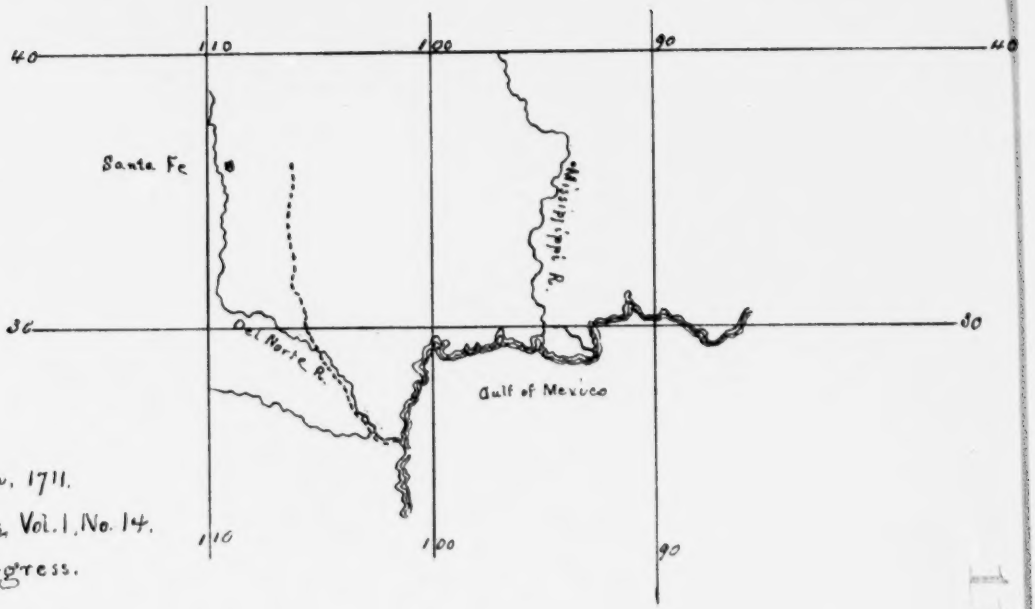
Claimants' evidence, No. 26.—Tracing from Moll's map No. 13, 1715.

(Filed Apr. 21, 1896. Court of Claims.)

135 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The map hereto annexed is an accurate tracing from a map published in London, England, in 1715, by H. Moll, being No. 13 in volume 1 of

Nos. 337, 338, & 339,
October Term, 1899. } Page 130



H. Moll, London, 1711.
Old American Maps, Vol. 1, No. 14.
Library of Congress.

115

Library of Congress
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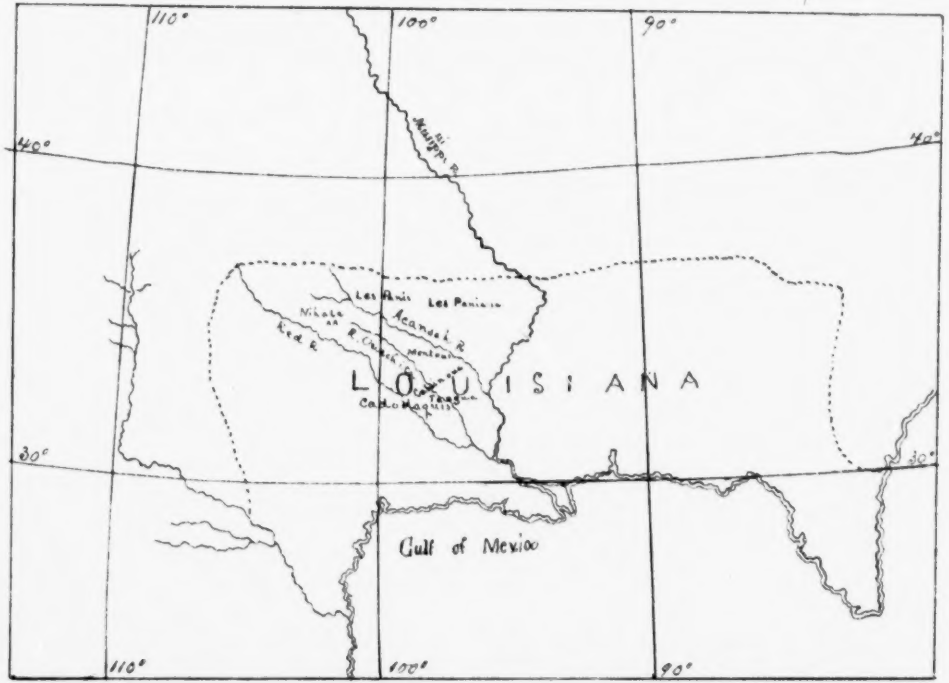

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Nos. 337, 338, & 339
October Term, 1899. } Page 136

H. Moll. London, 1715

Old New Maps of America. Vol. No 13. Library of Congress

Nos. 337, 338 & 339.
October Term, 1899.
Page 139

H. Moll. London 1715.
Old Maps of America. Vol. I, No 16.
Library of Congress.

Old Maps of America," now in the Library of Congress, and accessible, inspection and for production in court, to all the attorneys and counin this cause. The annexed tracing includes everything shown on d map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 136.)

7 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* IE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 27.—Tracing from Moll's map No. 16, 1715.

(Filed Apr. 21, 1896. Court of Claims.)

8 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The map hereto annexed is an accurate tracing from a map, published H. Moll, in London, England, in 1715, being No. 16, in volume 1, "Old Maps of America," now in the Library of Congress, and accesle, for inspection and production in court, to all the attorneys and counin this cause. The annexed tracing includes everything shown on d map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 139.)

0 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* IE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 28.—Tracing from De Lisle's map, 1741.

(Filed Apr. 21, 1896. Court of Claims.)

1 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from De Lisle's map, pubhed by Covens and Mortier, at Amsterdam, Netherlands, in 1718,

being No. 38, in volume 2, of the "Atlas Nouveau," now in the Library of Congress and accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 142.)

143 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 29.—Tracing from G. De l'Isle's map, 1720.

(Filed Apr. 21, 1896. Court of Claims.)

144 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows:

The annexed map is an accurate tracing from map No. 5, in the "Atlas Nouveau" of G. De L'Isle, published at Amsterdam in 1720. Said atlas is now in the Library of Congress and is accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 145.)

145*a* United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 30—Tracing from De Lisle's map, 1722.

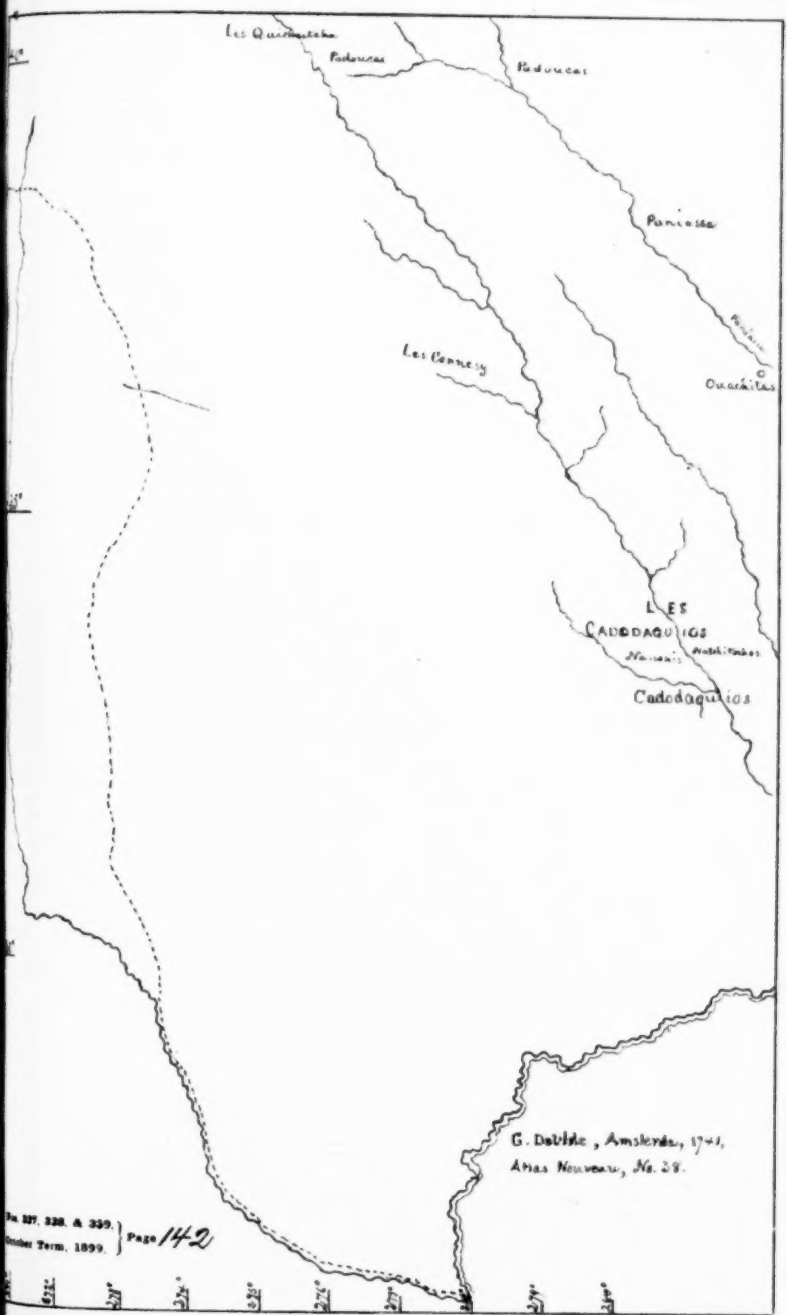
(Filed Apr. 21, 1896. Court of Claims.)

146 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows:

The annexed map is an accurate tracing from a map of De Lisle, published by Covens and Mortier, at Amsterdam, Netherlands, in 1722, being No. 39 in "Atlas Nouveau," now in the Library of Congress,

11164

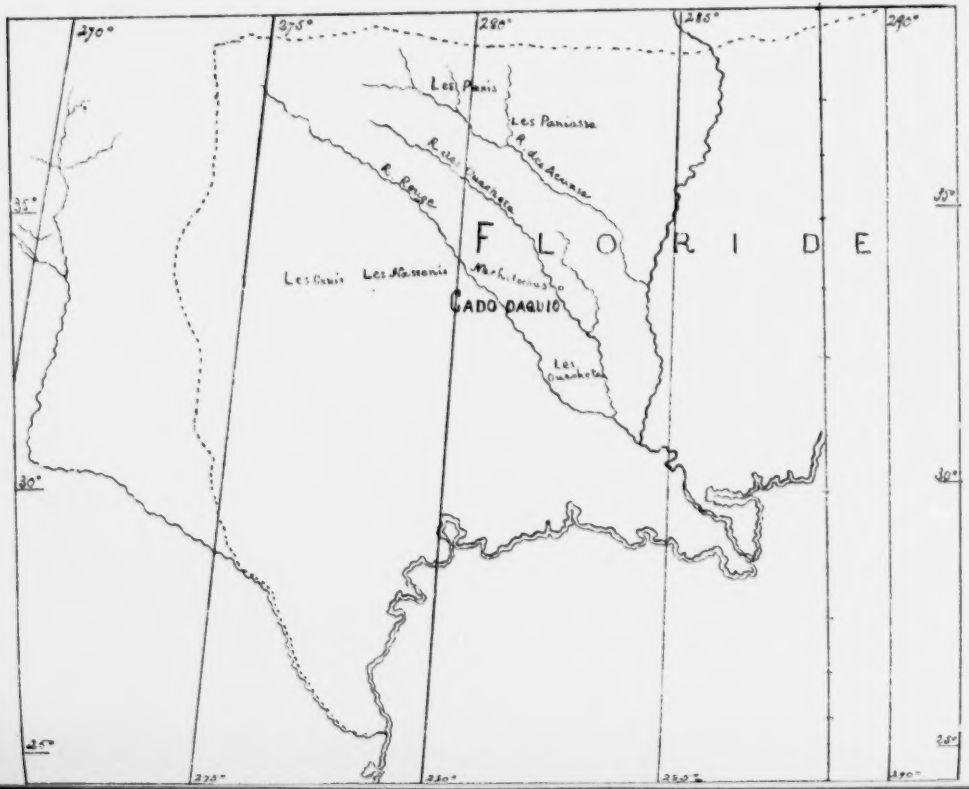


Pa. Rff. 338. & 339.
October Term. 1899.
Page 142

Nos. 337, 338, & 339,
October Term, 1899. } Page 145

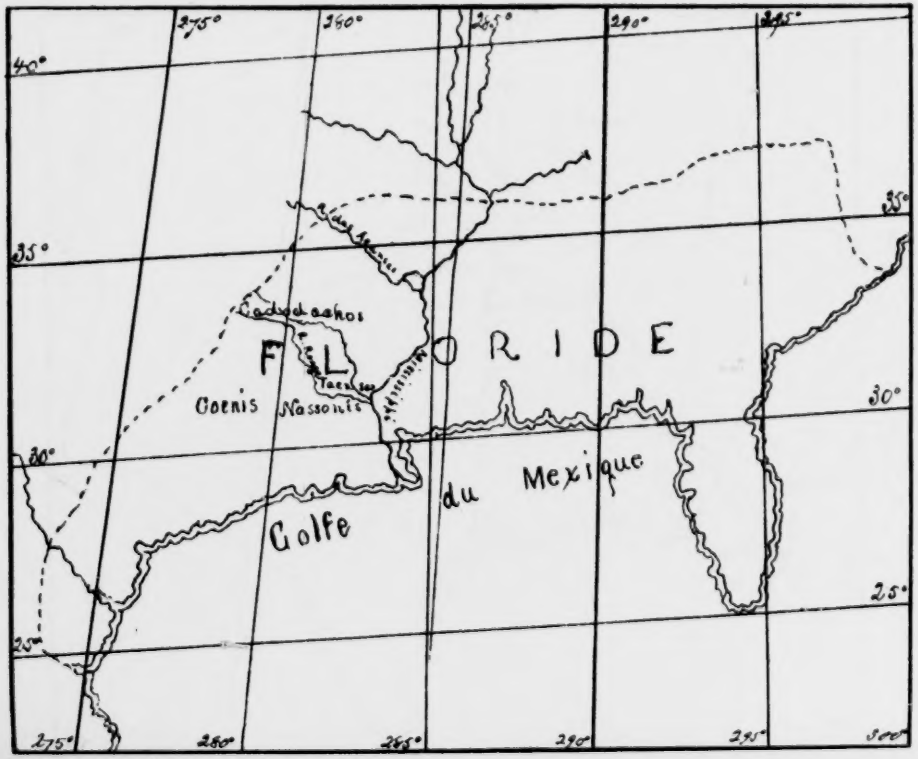
G. De l'Isle, Amsterdam, 1720,
Atlas Nouveau, No. 5.

1165



Nos 337, 338, & 339. October Term, 1899. Page 147

G. De l'Isle, 1722, Amsterdam, Atlas Nouveau, Vol. 2, No. 39.



G. Delisle, Amsterdam, 1733.

accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p. 147.)

148 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 31—Tracing from G. De l'Isle's map, 1733.

(Filed Apr. 21, 1896. Court of Claims.)

149 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from G. De l'Isle's Atlas Nouveau, volume 2, No. 29. Said atlas was published at Amsterdam, in 1733, and is now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. Said tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p. 150.)

151 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 32—Tracing from Popple's map, 1733.

(Filed Apr. 21, 1896. Court of Claims.)

152 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from H. Popple's map, published in London, England, in 1733, which map is No. 17 in volume 1

of "Old Maps of America," now in the Library of Congress, and accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p. 153.)

154 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 33—Tracing from H. Popple's map, 1735.

(Filed Apr. 21, 1896. Court of Claims.)

155 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from the map of H. Popple, published in London in 1735, being No. 8 in volume 2 of Old Maps of America, now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The said tracing includes everything shown on said map pertinent to this case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p. 156.)

157 United States Court of Claims.

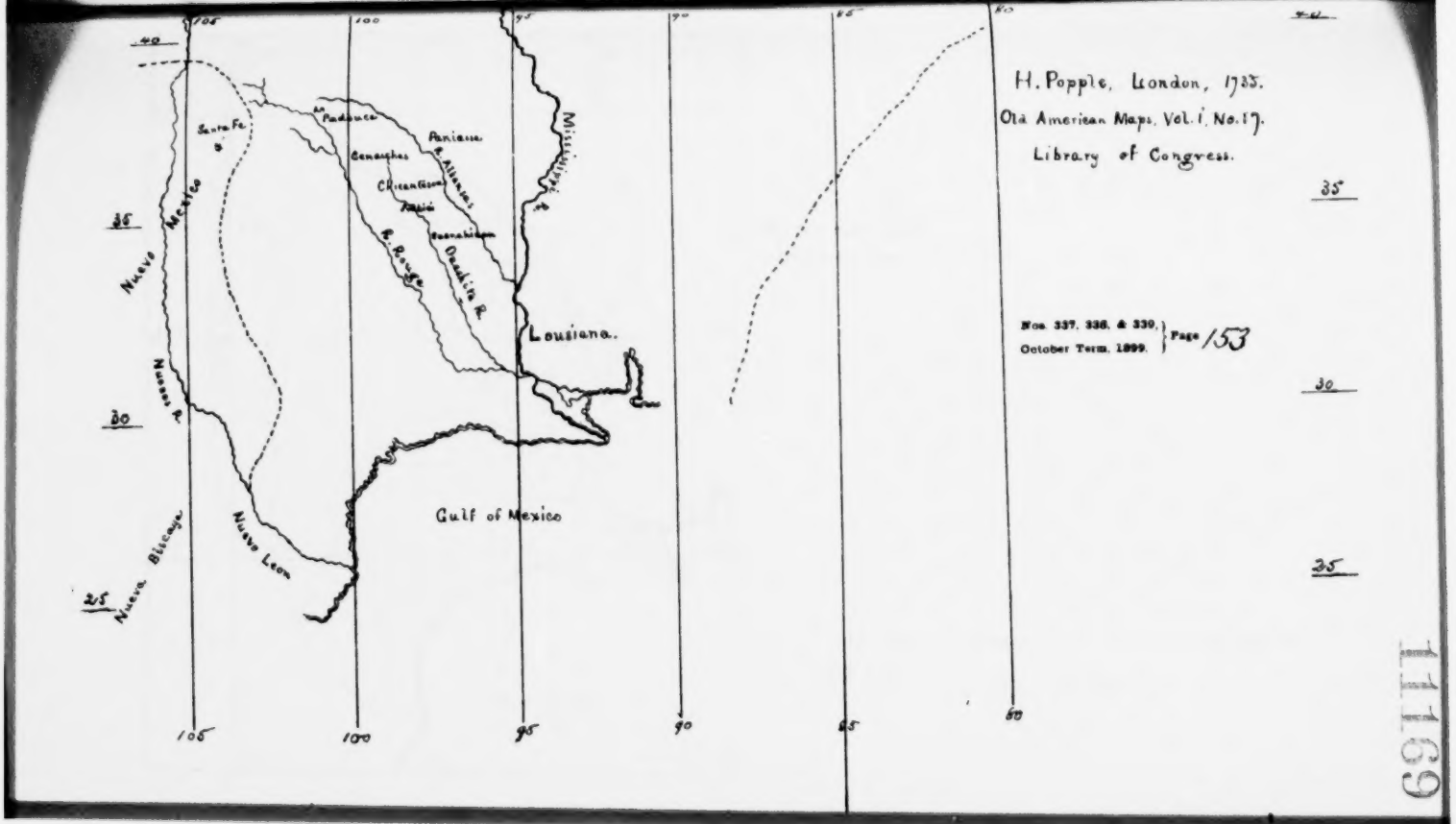
THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

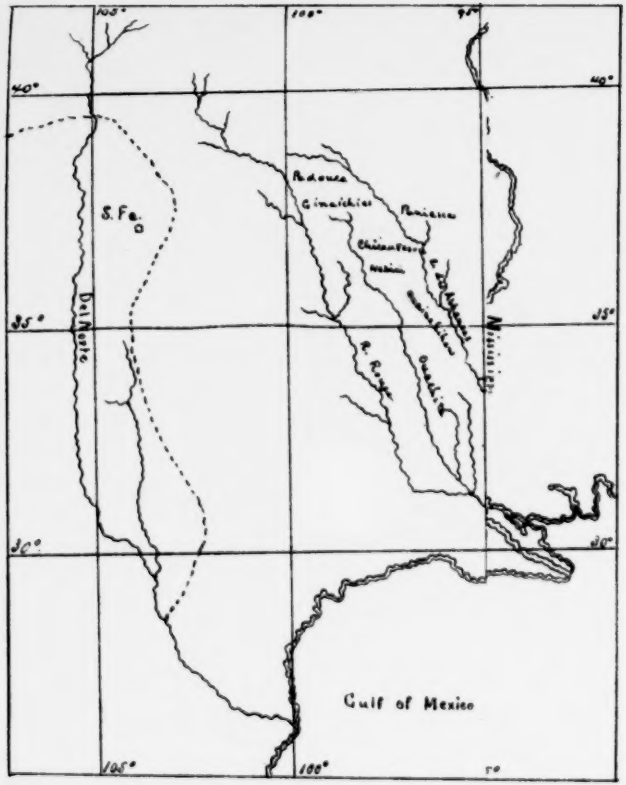
Claimants' evidence, No. 34—Tracing from De Lisle's map, 1739.

(Filed Apr. 21, 1896. Court of Claims.)

158 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from De Lisle's map, published at Amsterdam, Netherlands, in 1739. Said map is now in the Library of

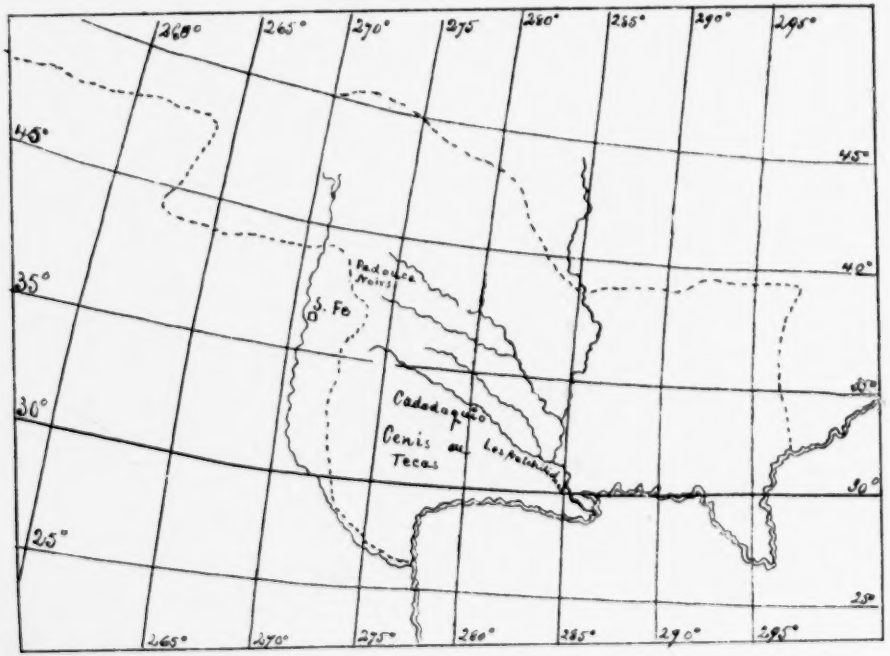

H. Popple, London, 1733.
Old American Maps, Vol. I, No. 17.
Library of Congress.
Nos. 337, 338, & 339, October Term, 1899. Page 153
Louisiana.
Gulf of Mexico
Nuevo Mexico
Nuevo Leon
Nueva Biscaya
Santa Fe
Missisipi R.
R. Bravo
Panimaha
Canohatino
Ouadalite R.
105
100
95
90
85
80
40
35
30
25



Nos. 337, 338, & 339.
October Term, 1890. } Page 156

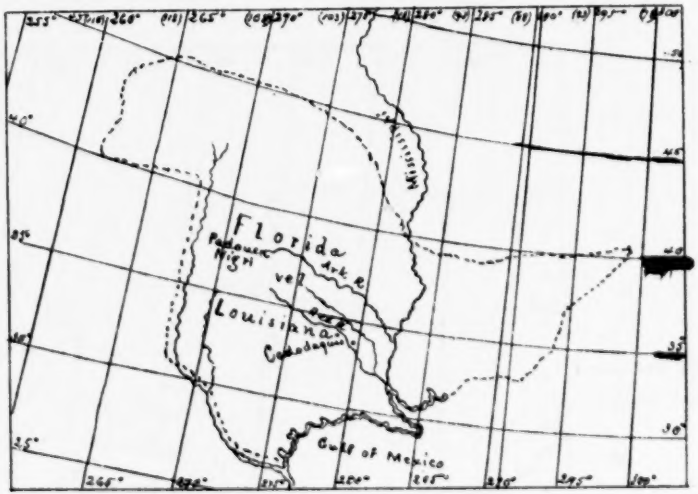
H. Popple, London, 1785. Old Maps of America, Vol. 2, No. 8, Library of Congress.

11170



Nos. 337, 338, & 339,
October Term, 1899. } Page 159

G. De l'Isle, 1739, Amsterd
Atlas Nouveau, Vol. 2, No. 2



A. G. Boehme, 1746. Old American Maps, Vol. 1, No. 18, Library of Congress.

Longitude east from Ferro.
Longitude west from Greenwich in brackets.
378° − F = O.

Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p. 159.)

160 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence. No. 35.—Tracing from Boehme's map, 1746.

(Filed Apr. 21, 1896. Court of Claims.)

161 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from A. G. Boehme's map, published in 1746. Said map is now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p.162.)

163 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence. No. 36.—Tracing from volume 2, No. 10 "American Maps," 1753.

(Filed Apr. 21, 1896. Court of Claims.)

164 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from a map published in 1753, being No. 10, in volume 2 of "American Maps," in the Library of Congress, and accessible, for inspection and production in court, to all the

attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p. 165.)

166 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence. No. 37.—Tracing from G. L. Le Rouge's map, 177

(Filed Apr. 21, 1896. Court of Claims.)

167 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows The annexed map is an accurate tracing from map No. 1a, of th "Atlas Ameriquain Septentrional" of G. L. Le Rouge, published Paris, France, in 1778. Said tracing includes everything shown on sai map pertinent to this case. Said atlas and map are now in the Librar of Congress, accessible, for inspection and production in court, to all th attorneys and counsel in this cause. The annexed tracing include everything shown on said map pertinent to this case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS,
Notary Public.

(Here follows diagram marked p. 168.)

169 United States Court of Claims.

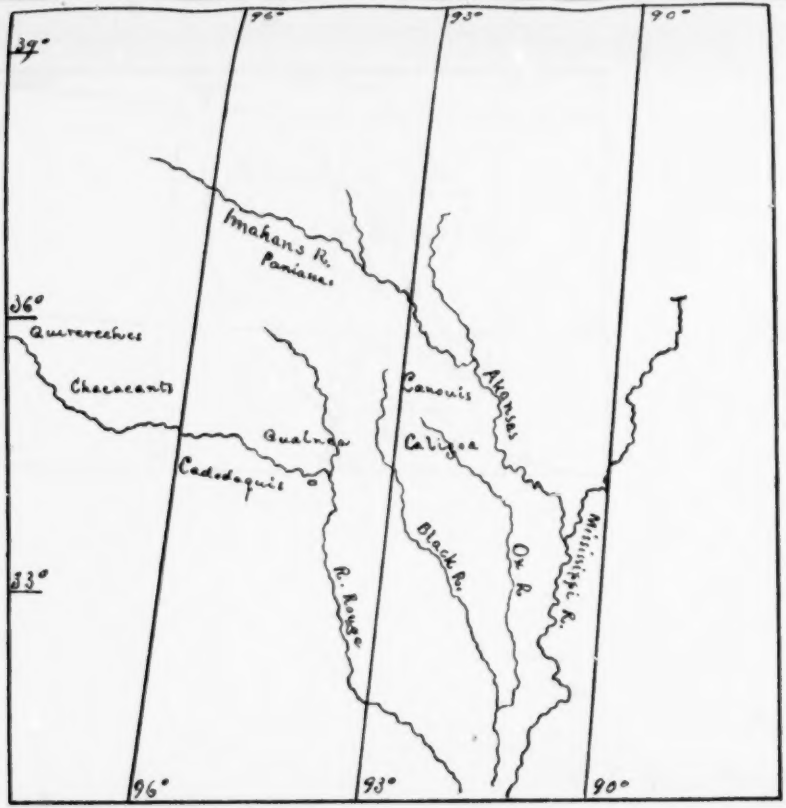
THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence. No. 38.—Tracing from map of Barbé-Marbois, 1820

(Filed Apr. 21, 1896. Court of Claims.)

170 DISTRICT OF COLUMBIA, *ss:*

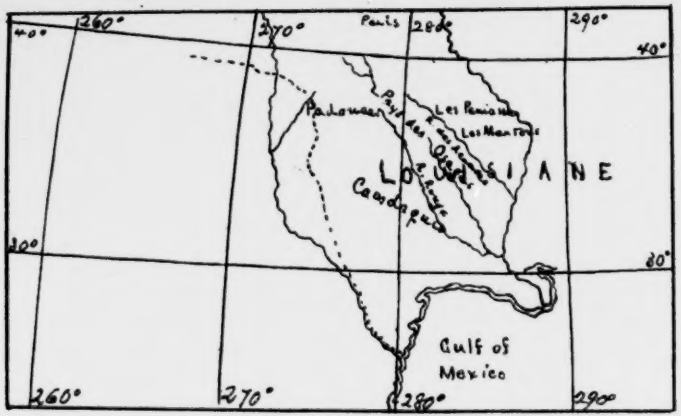
Halbert E. Paine, having been duly sworn, deposes as follows The map hereto annexed is an accurate tracing of the map attached t the "History of Louisiana," by Barbé-Marbois, the negotiator of th treaty by which Louisiana was ceded to the United States. Said histor



Nos. 337. 338. & 339.
October Term, 1899.
Page 165

American Maps, 1758,
Vol. 2, No. 10.

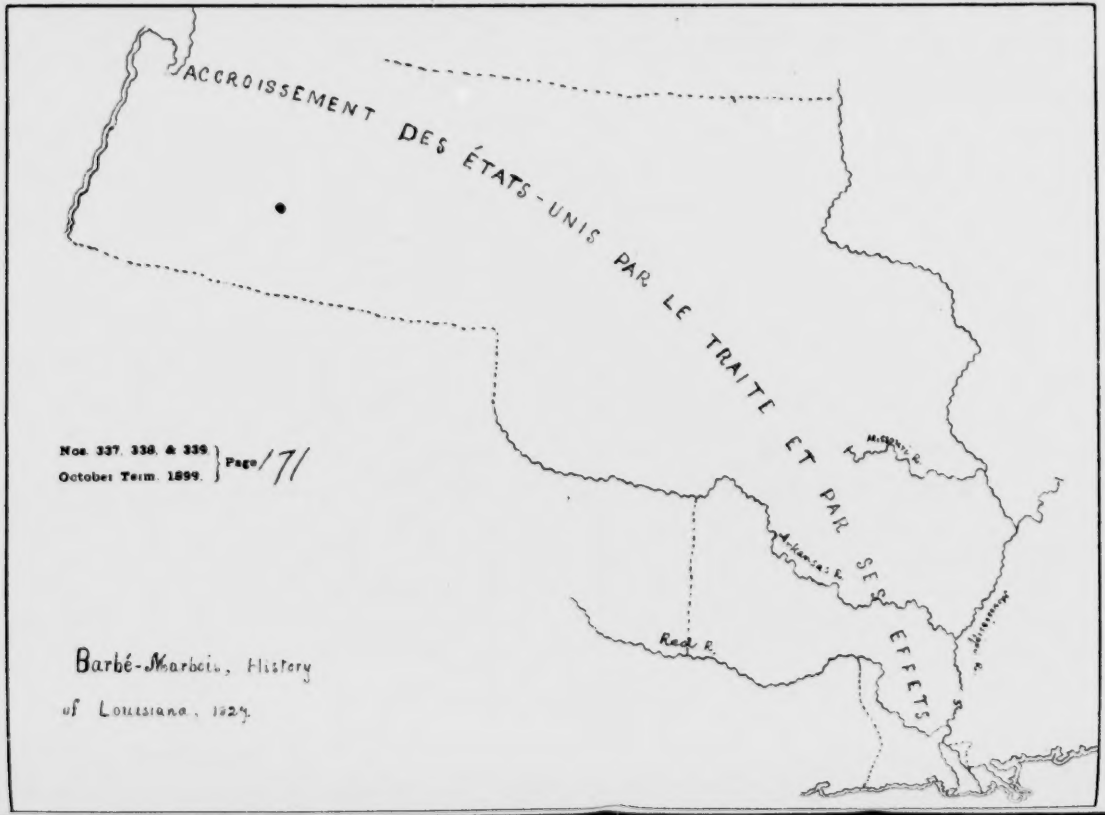
1174



Nos. 337, 338, & 339,
October Term. 1899. } Page 168

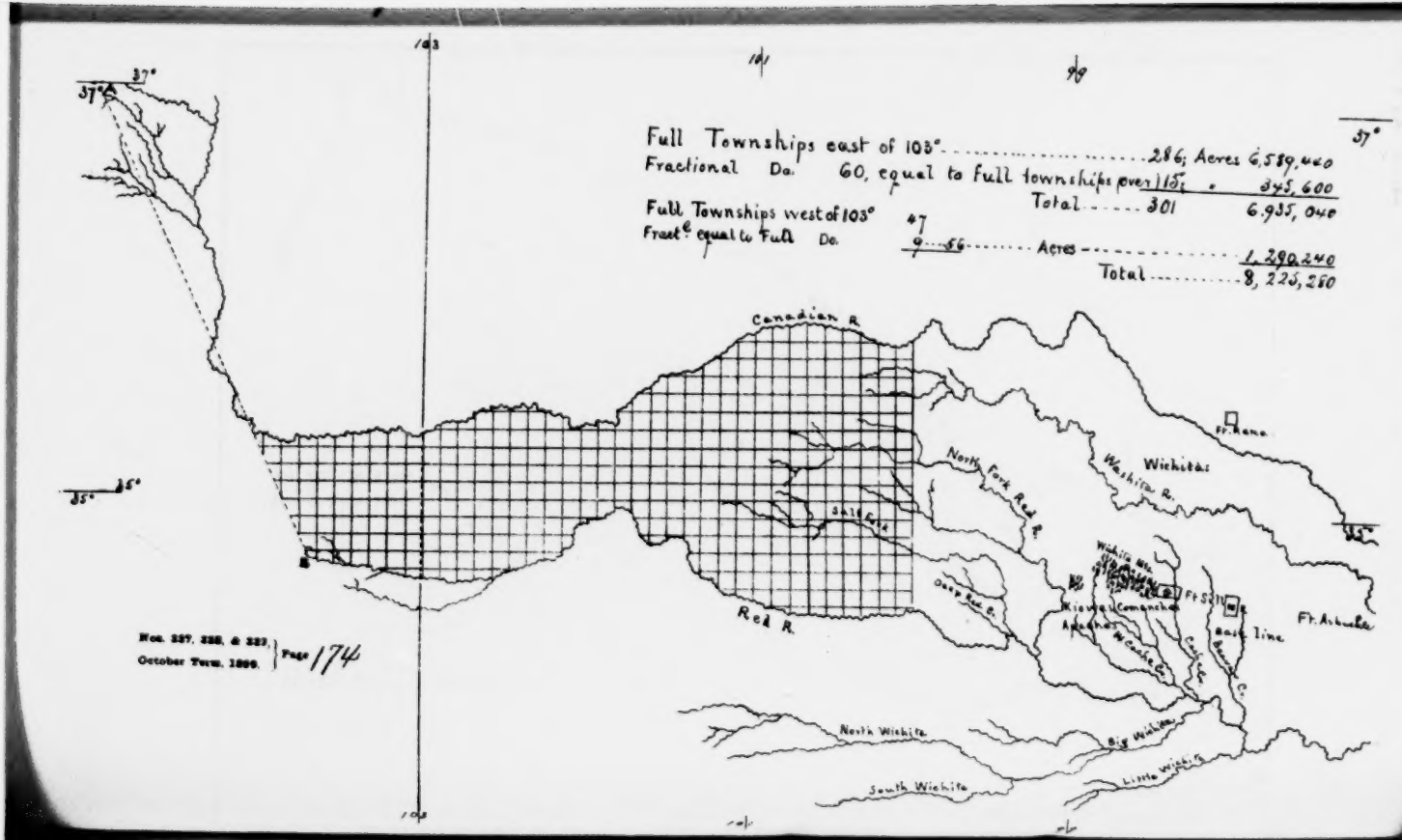
Atlas Ameriquain Septentrional,
G. L. Le Rouge, Paris, 1778. No. 1 A.

11175



Nos. 337, 338, & 339
October Term, 1899. } Page 171

Barbé-Marbois, History
of Louisiana, 1829.



Nos. 227, 228, & 229, October Term, 1899. | Page 174

as published in Paris, France, in 1829, and is now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 171.)

172 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence No. 39.—Tracing from Indian Office map, 1895.

173 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from the Indian Office map of 1895. The townships west of the meridian of 100° west longitude are laid off in the tracing on the scale on which the townships east of said meridian are laid off on the map. Said map is now in the Indian Office, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. Said tracing includes everything shown on said map pertinent to this case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 174.)

175 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 40.—Extracts relating to source of Red River.

(Filed April 21, 1896. Court of Claims.)

176 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed type-written document is an accurate extract from the deposition of John W. Clous, taken in the case of The United States, plaintiff, vs. The State of Texas, No. 3, original, October term, 1895, and printed in the record of said case, which record is now in the Library

of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

177 JOHN W. CLOUS, having been duly sworn, testified as follows:

Direct examination by Mr. ALLAN:

1. Q. Please state your residence, age, and occupation.

A. My legal residence is San Antonio, Texas; my station is West Point, New York; I am 54 years of age; I am major and judge-advocate U. S. Army and professor of law at the U. S. Military Academy at West Point. (Page 224.)

72. Q. How far from the confluence of these two streams is the most western point that you either crossed or stopped at on the South Fork of Red River?

A. Beyond the 103d meridian.

73. Q. How far beyond the 103d meridian?

A. Some miles—say from 15 to 20 miles or thereabouts; I do not remember exactly.

74. Q. In your computation how far from those points westward would be the source of the South Fork of Red River?

The WITNESS. From what point?

Mr. MAY. The 103d meridian westward.

A. About 15 or 20, as I said; thereabouts. (Page 232.)

96. Q. You said a while ago, in answer to a cross-interrogatory propounded by Mr. May, that you had been to the source of South Fork?

A. I did.

97. Q. Who was with you?

A. Gen. McKenzie's command of cavalry.

178 98. Q. Name two or three of the officers who visited the source of that river with you, please.

A. Major Wirt Davis and Capt. Thompson, of the 4th Cavalry.

99. Q. Name some others.

A. Wentz Miller, Henry W. Lawton, inspector-general of the Army, now in Washington, and Col. Latimer. That is all I can now remember without mentioning those who are dead.

179 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants. } No. 18932.

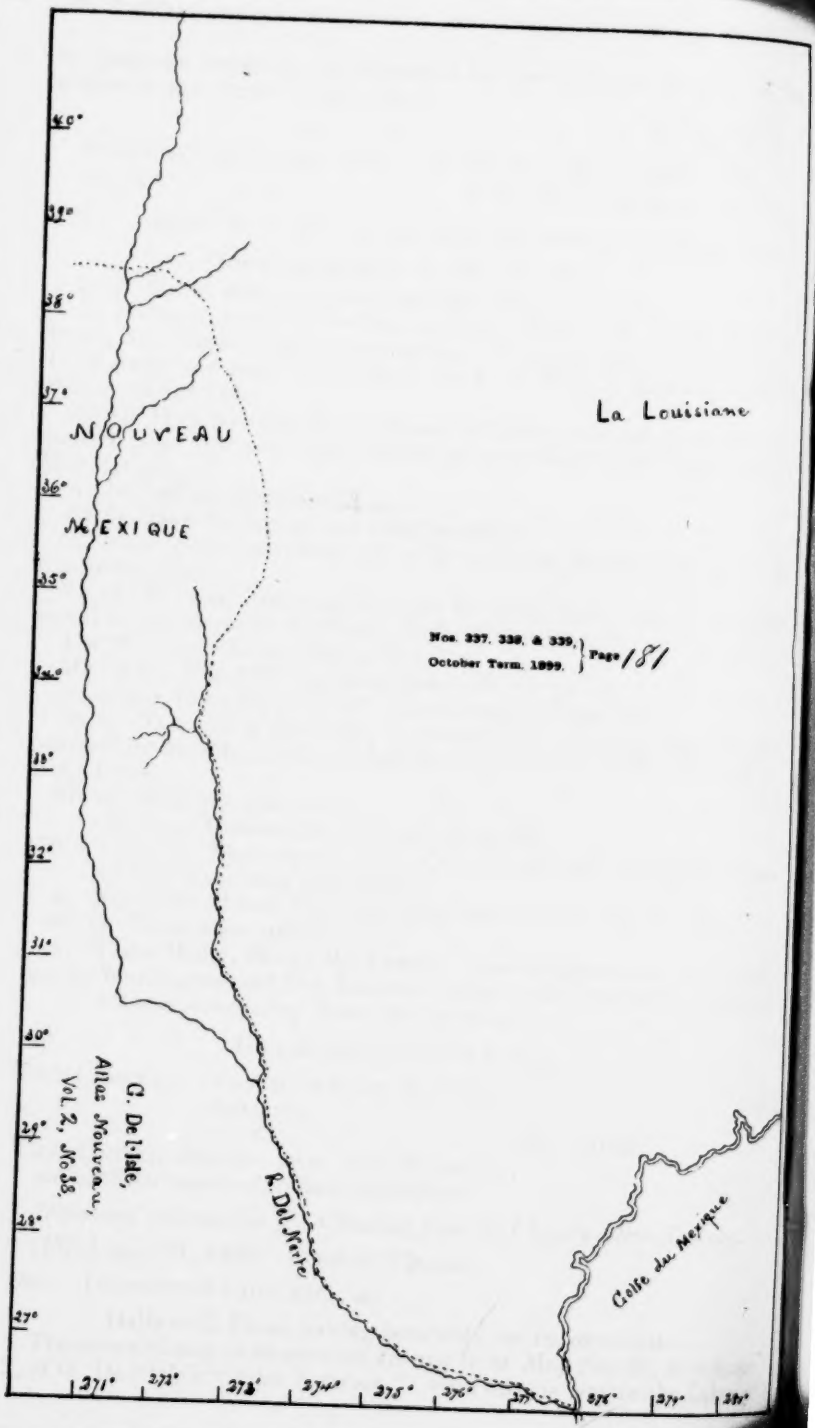
Claimants' evidence No 45.—Tracing from De l' Lisle's Atlas Nouveau.

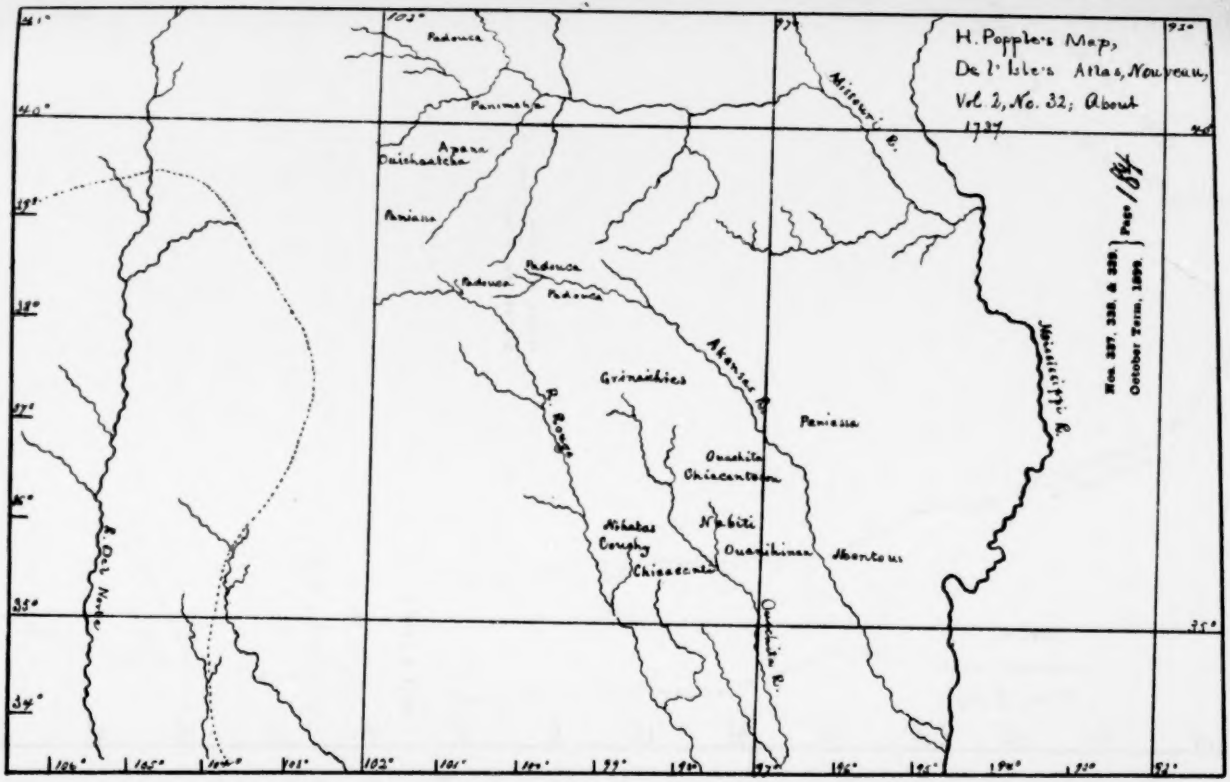
(Filed Apr. 21, 1896. Court of Claims.)

180 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, says that—

The annexed map is an accurate tracing from Map No. 38, in volume 2, of G. De l'Isle's "Atlas Nouveau." Said atlas is now in the Library


La Louisiane
NOUVEAU
MEXIQUE
R. Del Norte
Golfe du Mexique
C. De l'Isle,
Atlas Nouveau,
Vol. 2, No. 38.
Nos. 337, 338, & 339,
October Term, 1899.
Page 181


H. Popplers Map,
De l'Isles Atlas, Nouveau,
Vol. 2, No. 32; About
1737
Mon. 227, 228, & 229.
October Term, 1899.
Padouca
Panimaha
Apara
Daichaatcha
Paniana
Padouca
Padouca
Padouca
Grenadines
R. Rouge
Akansas R.
Paniassa
Ouachita
Chiscantoua
Nabiti
Natchez
Coroplay
Chiscacas
Ouachitas
Missouri R.
Mississippi R.
R. Del Norte

of Congress, and is accessible, for inspection and production in court, to all the attorneys and counsel in this case. Said tracing includes everything shown on said map pertinent to this cause.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 181.)

182 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence No. 46.—Tracing from Popple's map, 1737.

(Filed Apr. 21, 1896. Court of Claims.)

183 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from H. Popple's map, published in De l'Isle's "Atlas Nouveau," volume 2, No. 32, about 1737. Said map is now in the Library of Congress, accessible for inspection and production in court to all the attorneys and counsel in this cause. Said tracing contains everything shown on said map pertinent to this case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.
[SEAL] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 184.)

185 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 47.—Tracing from Du Val's map, 1684.

(Filed Apr. 21, 1896. Court of Claims.)

186 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from P. Du Val's map, published in Paris France, in 1684, being No. 7 in the "Maps of America," now in the Library of Congress, accessible for inspection and production

in court to all the attorneys and counsel in this cause. Said tracing contains everything shown on said map pertinent to this case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 187.)

188 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence, No. 48.—Tracing from Lea' Map, London, 1685.

(Filed Apr. 21, 1896. Court of Claims.)

189 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follow The annexed map is an accurate tracing from Phillip Lea's map, pul lished in London, England, about 1695, being No. 2 in the "Maps America," now in the Library of Congress, accessible for inspection an production in court to all the attorneys and counsel in this cause. Sai tracing includes everything shown on said map pertinent to the case.

H. E. PAINE.

Subscribed and sworn to before me this 21st day of April, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 190.)

191 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

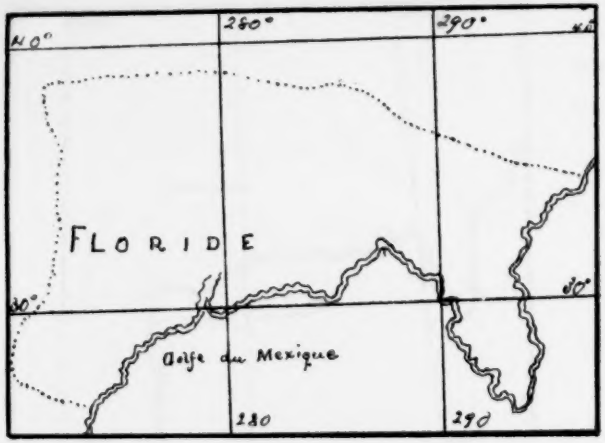
Claimants' evidence, No. 49.—Tracing from De l'Lisle's map, 1703.

(Filed Apr. 21, 1896. Court of Claims.)

192 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows The annexed map is an accurate tracing from G. De l'Isle's map o 1703, being No. 8, volume 1 of "Old American Maps," in the Librar of Congress, accessible for inspection and production in court to all th attorneys and counsel in this cause. Said tracing contains everythin shown on said map pertinent to this case.

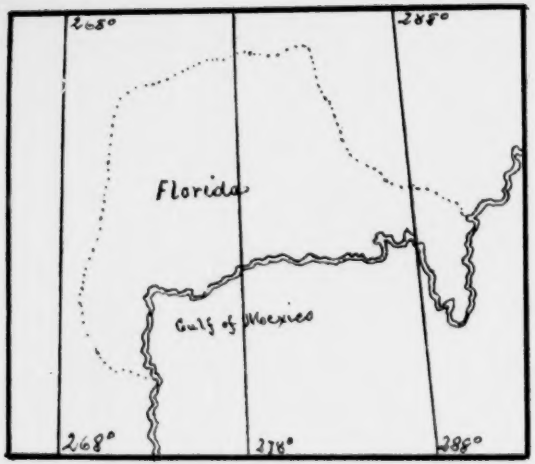
H. E. PAINE.



Nos. 337, 338, & 339,
October Term, 1899. } Page 187

P. Du Val, Paris, 1684
"Maps of America", No. 7

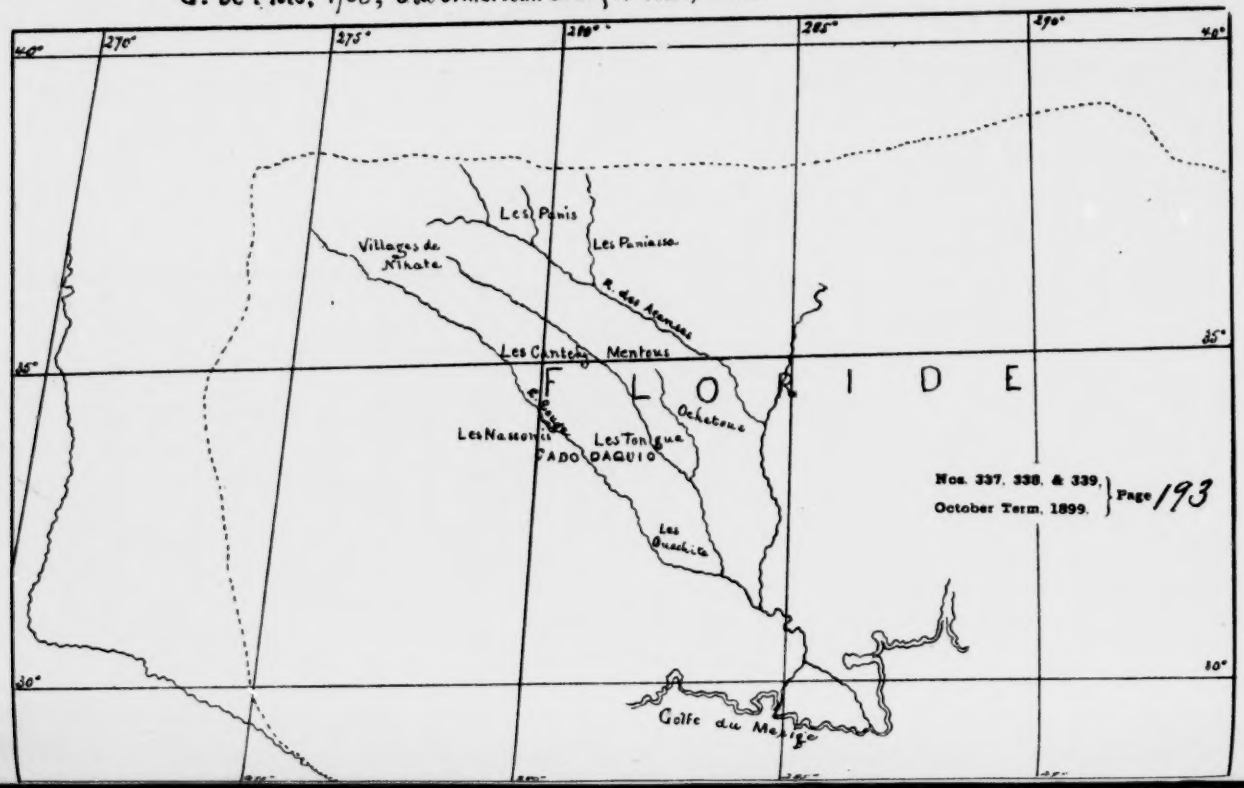
2811



Phillip Lea, London. About 1685.
Maps of America, No. 2.

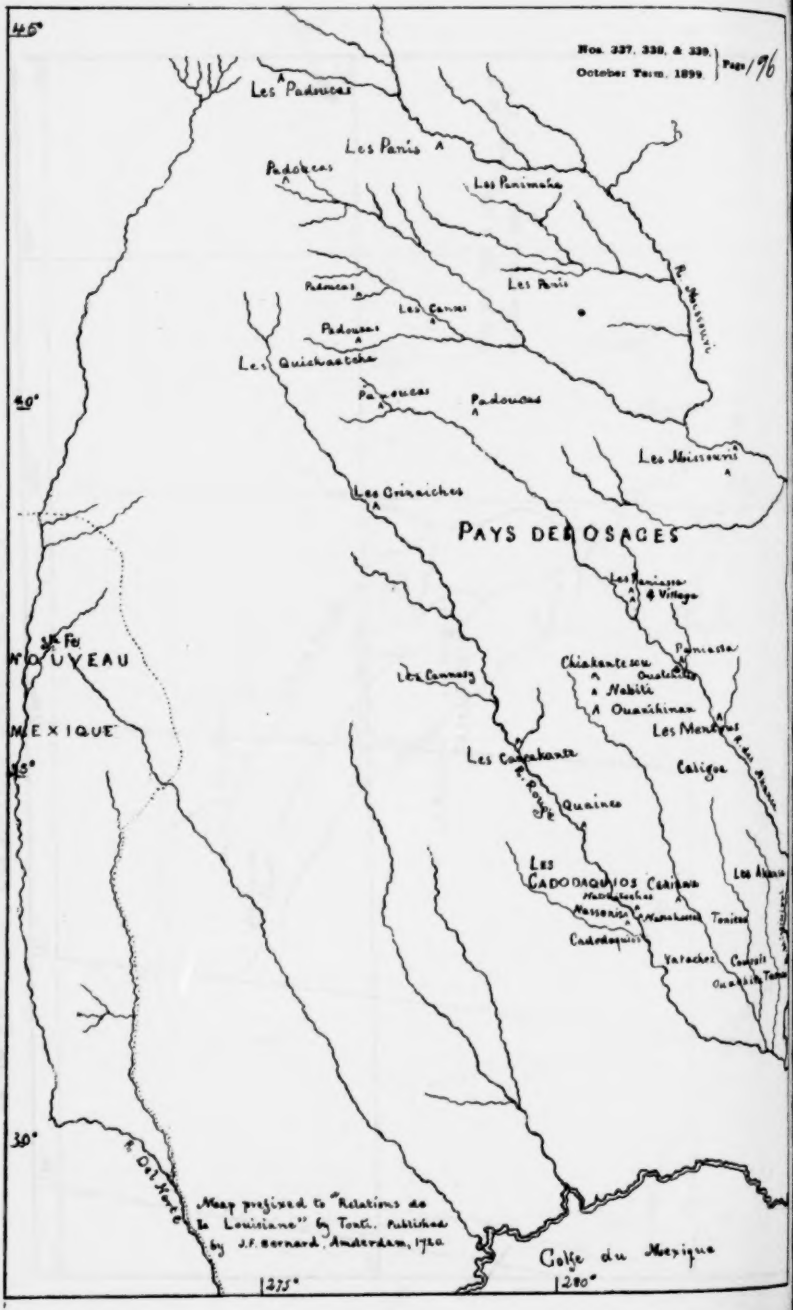
11183

G. De l'Isle, 1703; Old American Maps, Vol. I, No. 8.



Nos. 337, 338, & 339, October Term, 1899. } Page 193

11185


45°
Les Padoucas
Les Panis
Padoucas
Les Panimaha
Les Panis
Padoucas
Les Canes
Padoucas
Les Quichaastcha
40°
Padoucas
Padoucas
Les Missouris
Les Grisaiches
PAYS DES OSAGES
Les Panioussa
& Vilage
Panioussa
Chiakanteseu
Ouaskita
Nabiti
Ouasitchinas
Les Cansas
Les Mentous
NOUVEAU
MEXIQUE
35°
Les Canzahans
Caligoa
R. Rouge
Quaines
Les
CADODAQUIOS Cenis
Nassonis
Cadodaquis
Les Adaes
Tonicas
Yatachos
Coapoli
Ouasitis
R. du Nord
30°
Map prefixed to "Relations de la Louisiane" by Tonti. Published by J.F. Bernard. Amsterdam, 1720.
Golfe du Mexique
275°
280°

Subscribed and sworn to before me, this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 193.)

194 United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimant's evidence, No. 53.—Tracing from De l'Isle's map, Amsterdam, 1720.

(Filed Apr. 21, 1896. Court of Claims.)

195 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from the map prefixed to "Relations de la Louisiane," by Tonti, published at Amsterdam, in 1720. Said map is now in the Library of Congress, accessible for inspection and production in court to all the attorneys and counsel in this cause. Said tracing includes everything shown on said map pertinent to the case.

H. E. PAINE.

Subscribed and sworn to before me, this 21st day of April, 1896.
[SEAL.] S. G. HOPKINS, *Notary Public.*

(Here follows diagram marked p. 196.)

197 EXHIBIT H. E. P. No. 2.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 2.—Extract from deposition of Lieut. Beach.

(Filed Jul. 30, 1896. Court of Claims.)

198 The typewritten document hereto annexed is an accurate extract from the deposition of Lansing H. Beach, given in the case of The United States v. Texas, No. 4, Original, printed at page 302, volume 1, of the record of said case. Said volume is now in the Library of Congress, and is accessible, for inspection and production in court at the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

199 [Deposition of Lieut. Lansing H. Beach, Record U. S. v. Texas, 302.]

84. Q. Have you such familiarity with the subject of maps connected with the western part of the country as would enable you to state how far the location of Indian villages upon earlier maps should be relied upon as an identifying fact of location?

A. I know that with the prairie Indians a village was never fixed, except for short periods of time, and that the same Indians are frequently shown on different maps in different places, and that any general information based upon locality of prairie Indians is very unreliable.

85. Q. Can you state any instance of different location of Indian villages by the same name by examination of any of the maps before you?

A. Humboldt's map (Exhibit map No. 4) shows a Quichicans village upon the Rio Rojo de Natchitoches, at 99 west longitude. De Cordova's map (Exhibit No. 7) shows a Kechi village upon the Brazos, just west of the 99th meridian. Melish's map of 1818 shows a "Panee" village upon Red River, just west of the 96th meridian. Darby shows a Panis village upon the Red River, at about 97° 31′ west longitude. Pike (Exhibit map No. 25) shows "Pawnee hunting ground" between the Arkansas and Negracka rivers, at about 103 west longitude. Disturnell, 1847 (Exhibit map No. 6), shows "Pawnies" upon Red River in
199½ two places, between 95 and 97 west longitude. Humboldt's map (Exhibit map # 4) shows, in the vicinity of the 100th meridian, the "Quirechas," as upon a branch of the Rio Rojo de Natchitoches, which name Quirechas, I believe, came from Coronado, and was copied on nearly all maps after his time. I find also on Humboldt's map, about latitude 36, longitude between 102 and 103, Indians called Tauaizes.

86. Q. Is that on Red River?

A. No. Humboldt breaks the Red River off. De Cordova's map (Exhibit map No. 7) shows a "Towash" village upon the Brazos near the 32nd parallel. Disturnell (Exhibit map No. 6) shows a "Toyask" village upon Red River, shortly east of the 97th meridian. These last three Indian names all mean the same tribe and are different spellings for the Spanish name of these Indians. The English name was very different, and I do not remember it.

200 EXHIBIT H. E. P. No. 4.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 4.—Extracts from H. H. Bancroft's work.

(Filed, Jul. 30, 1896. Court of Claims.)

201 The annexed typewritten document is an accurate extract from page 733, volume 15, of Hubert H. Bancroft's work, which is

ow in the Library of Congress, and is accessible, for inspection and roduction in court on the trial, to all the attorneys and counsel in this ause.

H. E. PAINE.

02 Volume 15 of Hubert H. Bancroft's work, quoted on page 733 of the record in United States v. Texas, contains the following tatement:

"A conference of officers at Bexar in January, 1759, made plans for he campaign. The army of five hundred soldiers and volunteers, with large force of Apache auxiliaries, in the best of spirits, started in ugust, under the command of Parilla. After marching some hundred nd fifty leagues they surprised a rancheria, killing fifty-five of the foe nd making many captives. They then advanced against the towns of he Taovaiases and, in the region of what was later called San Teodoso, ound six thousand Indians of different tribes, in a strongly fortified osition, many of them armed with muskets, and displaying a French ag. The savages did not wait to be attacked, but made a sortie in force nd the Spaniards fled in a panic."

203 EXHIBIT H. E. P., No. 6.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 6.—Extract from La Salle's statement.

(Filed July 30, 1896, Court of Claims.)

204 The annexed typewritten document, in the French language, is an accurate extract from a statement of La Salle, made in 1682, nd recorded in Margry's work, volume 2, page 201. The English ranslation appended thereto is accurate. Said volume is now in the ibrary of the Bureau of American Ethnology, and is accessible, for nspection and production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

205 On page 201 of Margry, volume 2, occurs the following statement of La Salle, made in 1682:

"I'en ay un, de la nation des Pana, qui demeurent à plus de deux cent lieues à l'Ouest, sur une des branches du Mississippi, et y habitent deux villages l'un prez de l'autre."

"I have one of them (a boy), of the nation of the Pana, who live more than two hundred leagues westward, on one of the branches of the Mississippi, and inhabit there two villages near each other."

206 EXHIBIT H. E. P., No. 7.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 7.—Extract from Tonti's statement.

(Filed Jul. 30, 1896. Court of Claims.)

207 The annexed typewritten document, in the French language, is an accurate extract from a statement of Tonti, made in 1688, and recorded at page 188 of Barnard's work, published at Amsterdam in 1734. The English translation appended thereto is also accurate. Said Barnard's work is now in the library of the Bureau of American Ethnology, and is accessible, for inspection and production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

208 Relation de la Louisiane. Amsterdam, 1720, p. 191.

Bernard, 188; Amsterdam, 1734. Tonti, Decouvèrtes en Amérique, under date of February, 1688, says (p. 319, ed. of 1697):

"Etant arrivé chez les Taensas, les principaux de la Nation m'informerent de la querelle avec les Nachitoches, à raison du sel dont ceaux-ci ne leur vouloient point faire part, et me prirent de vouloir me mêler de leur accommodement. J' acceptai volontiers cette mediation; Trente Taensas se joignirent à notre troupe. Nous arrivâmes, après huit jours de marche au village des Nachitoches. Cette Nation ne fait qu'un peuple avec deux autres, qui sont les Ouasita et les Capichis. Ces Chefs destrois Nations s'étant assemblez, on me fit asseoir au milieu. Les trente Taensas, avant que de prendre leur place, demanderent la permission d'aller au Temple implorer le secours de leur Dieu pour en obtenir une bonne paix. * * Ces conventions faites, ils se jurerent une paix mutuelle, et l'on dansa le Calumet. Je pris ensuite congé des uns et des autres."

209 Bernard, 188; Amsterdam, 1734; Tonti, under date of February, 1688, says:

"When I arrived among the Taensas, the chiefs of that nation informed me of their quarrel with the Nachitoches on account of the salt, in which the latter would give them no share, and they prayed that I would intervene for their reconciliation. I willingly undertook this mediation. Thirty Taensas joined themselves to our company. We arrived, after a march of eight days, at the village of the Nachitoches. This nation makes but one people with two other nations, which are the Ouasita and the Capicis. These chiefs of three nations being assembled, I was made to take a seat in their midst. The thirty Taensas, before they took their places, asked permission to go to the temple to implore their God to aid them in securing a good peace. * * These conventions being made, they swear a mutual peace, and dance the Calumet. Then I took leave of them all."

210 EXHIBIT H. E. P., No. 8.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 8.—Extract from La Harpe's Journal.

(Filed Jul. 30, 1896. Court of Claims.)

211 The annexed typewritten document, in the French language, is an accurate extract from page 6 of La Harpe's Journal of September, 1719, published in Paris in 1831. The English translation appended thereto is also accurate. Said book is now in the Library of Congress, and is accessible, for inspection and for production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

212 [La Harpe's Journal, Paris, 1831, page 206, September, 1719.]

"Le 3, ils firent six lieues, et trouvèrent le chef des Touacaros, accompagné de six autres chefs de nations, qui venaient a leur rencontre; avertis de leur approche, ces chefs firent dire à M. de La Harpe, par un Naouidiche, qui parlait la langue nassonite, que la nouveauté de voir dans leur pays une nation inconnue ne lassait pas que de les surprendre, mais que la franchise, avec laquelle on venait, leur fasait croire que c'était dans le dessein d'être amis; que sur ce pied, ils voulaient bien les recevoir comme frères. M. de La Harpe leur fit répondre que le grand-chef de sa nation l'avait envoyé pour les assurer de la protection centre leurs enemis; qu'ils trouveraient dans cette alliance l'avantage de se rendre recommandables à toutes les nations dont la plus grande partie reconnaissait ce chef pour le leur; que son intention était qu'ils fussent tous en paix, étant leur père commun; que s'ils suivaient sa volenté, on leur donnerait les marchandises dont ils auraient besoin, et des armes à feu, a fin de pouvoir plus commodément à leur subsistence. Ces chefs avaient apporté du pain de maïs, et des viandes boucanées; ils regalerent les voyageurs, et les firent ensuite monter sur des chevaux, qu'ils avaient amenés pour se rendre à
213 leurs villages; le pays qu'ils traversèrent était uni; à une portée de fusil de leurs habitations ils virent un bois clair, et un beau ruisseau, au dessus duquel était le village sur des coteaux, le long des bords de la rivière des Alkansas, qu'ils nomment Imaham à la latitude de 37° 45′ éloigné des Nassonites de quatre-vignt-neuf lieues, en ligne droite, dans le nord-nord ouest."

214 "The 3, they made six leagues and found the chief of the Tonacaros, accompanied by six other chiefs of nations who came to meet them; advertised of their approach, these chiefs caused it to be stated to Mr. de La Harpe, by a Naouidiche who spoke the Nassonite language, that the novelty of seeing an unknown nation in their country did not fail to surprise them, but that the freedom with which they came

made it apparent that it was with the purpose of being friends; that u
this footing they would receive them as brothers. Mr. de La Ha
caused answer to be made to them that the Great Chief of his Nation
sent him to assure them of protection against their enemies; that t
would find in this alliance the advantage of securing consideration
themselves among all the nations, of which the greater part recogn
this chief for their own; that his intention was that they should all l
peace, he being their common father; that if they would follow his
the goods which they needed would be given to them, and also firea
to enable them to provide more conveniently for their subsistence. T
chiefs had brought corn bread and smoked meat; they regaled the t
ellers and caused them to mount horses, which they had led out, to g
their villages; the country which they traversed was level; at gun
distance from their habitations, they saw a thin wood and a beau
rivulet, above which was the village on declivities along the banks of
river of the Alkansas, which they call Imaham, at latitude 37° 45′,
tant from the Nassonites, in a straight line, north-northwest, eighty-
leagues."

215 EXHIBIT H. E. P., No. 9.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND Affiliated Bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 9.—Extract from La Harpe's Jou

(Filed Jul' 30, 1896. Court of Claims.)

216 The annexed typewritten documents in the French langu
are accurate extracts from La Harpe's Journal of Septembe
1719, published at pages 289 and 292 of the sixth volume of Marg
work. The English translations appended thereto are also accurate.
volume is now in the library of the Bureau of American Ethnology,
is accessible, for inspection and production in court on the trial, to all
attorneys and counsel in this cause.

H. E. PAIN

217 In La Harpe's Journal, 6 Margry, 289, under date of Sept
ber 3, 1719, he says:

"A une portée de fusil de leurs habitations, nous traversasmes un b
ruisseau enfermé d'un bois clair, au-dessus duquel sont les villages, si
sur des costeaux, le long de la branche du S.-O. de la rivière des Alcan
Ces villages n'en font qu'un, les maisons se joignant les unes aux aut
courant de l'Est à l'Ouest, une lieue, dans la plus belle situation que
puisse voir. Les Nations de ces establissements sont les Touaca
Toayas, Caumuches, Aderos, Ousitas, Ascanis, Quataquois, Quicasqui

Honechas; ils peuvent fournir six mille personne de tout sexe."

218 On page 292 he says, under date of September 8, 1719:

"Le 8, je fis assembler tous les principaux chefs de ces nations, pour m'informer d'eux de la situation de la rivière des Alcansas, de la demeure la plus prochaine des Espagnols, du commerce qu'ils fasoient avec les Padoucas. A quoy ils me respondirent que leur rivière fermoit deux branches au-dessous de leur village; que celle, sur laquelle estoient leurs demeures, remontoit au soleil couchant jusq'à des villages Espagnols et Padoucas."

219 "At gunshot distance from their habitations, we crossed a beautiful rivulet enclosed by a thin wood, above which are the villages, situated on declivities along the southwest branch of the river of the Alkansas. These vi lages make only one, the houses joining themselves one to another, running from east to west, one league, in the most beautiful situation possible to be seen. The nations of these establishments are the Touacaras, Toayas, Caumaches, Aderos, Ousitas, Ascanis, Quataquois, Quicasquiris, Honechas. They can furnish six thousand persons of both sexes."

"The 8th, I caused all the principal chiefs of these nations to assemble, in order that I might be informed by them of the position of the river of the Alcansas, the nearest dwelling place of the Spaniards, the commerce which they carried on with the Padoucas. To which they answered me that their river formed two branches below their village; that the branch upon which their dwellings were situated extended towards the setting sun to villages of the Spaniards and Padoucas."

220 EXHIBIT H. E. P., No. 10.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND Affiliated Bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 10.—Extract from Du Pratz' History.

(Filed Jul' 30, 1896. Court of Claims.)

221 The annexed typewritten document in the French language is an accurate extract from page 243 of volume 2 of the History of Louisiana, by Du Pratz, published in Paris in 1758. The annexed English translation of said extract is also accurate. Said volume is now in the library of the Smithsonian Institute, and is accessible, for inspection and production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

222 The "History of Louisiana," by Du Pratz, published in Paris in 1758, contains, at page 243 of volume 2, the following statement:

"Depuis la Riviere Rouge, jusqu'à celle des Arkansas, il n'y a aucune Nation. Il y en avoit une sur la Riviere Noire; c'étoit les Ouachitas, qui

avoient donné leur nomme à cette Riviere. Il ne reste rien a présent
cette Nation; les Tchicachas l'ayant détruite en grande partie, et le re
s'étant retiré chez les Cadodaquioux, chez lesquels les Tchicachas n'ose
les inquiéter."

223 "From the River Rouge to the Arkansas there is no natio
There was one on the Black River; this was the Ouichitas, w
had given their name to that river. Nothing remains at present of t
nation, the Chickasaws having destroyed it in great part, and the remna
having retired amongst the Cadodaquioux, amongst whom the Chickasa
did not dare to disturb them."

224 EXHIBIT H. E. P. No. 11.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 11.—Extract from Jeffery's Histo

(Filed Jul' 30, 1896. Court of Claims.)

225 The annexed typewritten document is an accurate extract fr
volume 1, page 165, of Jeffery's History, published in Lond
in 1761. Said volume is now in the Library of Congress, and is acce
sible, for inspection and production in court on the trial, to all the atto
neys and counsel in this cause.

H. E. PAINE.

226 [Jeffery's History of the French Dominions in North and South Ameri
London, 1761, page 165, vol. 1.]

"About a hundred leagues from the place where this river falls i
the Mississippi are the habitations of a vast nation called Cadodaquiou
which extends, in different tribes, a vast way. They, as well as the pe
ple before mentioned, have a language peculiar to themselves; but t
of the Chickasaws is understood among them all, like Lingua Franca
the Levant; they call it the vulgar tongue.

"The Ouachitas are intermixed among them, having abandoned t
Black River, to which they gave name, to avoid the rage of the Chick
saws, who dare not follow them; for the same reason the Taensas, w
formerly inhabited this coast, near a river to which they lent their deno
ination, withdrew to the neighborhood of the Mobileans, where we bef
took notice of them."

227 EXHIBIT H. E. P. No. 12.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 12.—Extract from Robin, 1775.

(Filed Jul' 30, 1896. Court of Claims.)

228 The annexed typewritten document in the French language is an accurate extract from volume 3, page 3, of Robin's work, published in Paris in 1807. The English translation appended thereto is also accurate. Said book is now in the Library of Congress, and is accessible, for inspection and production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

229 [Robin, Paris, 1807, vol. 3, page 3. Voyages dans l'Interieur de la Louisiane.]

"Des Natchitoches au Yatasses par eau on compte vingt-cinq lieues; de ce village sauvage à celui des Petits Cadeaux, trente; et de là aux Grands Cadeaux, cinquante; des Grands Cadeaux aux Taouayaches, qui se trouvent sur le bord occidental de la dite rivière, et les Ouitcitas sur l'oriental, ces deux villages vis-à-vis l'un de l'autre, quatre-vingts lieues; de ces deux villages, en montant toujours la même rivière, on trouve, à cinquante lieues, dans son milieu, un rocher de sel calciné, qui sert à l'approvisionnement des nations de cette partie, qui en font même entre elles commerce; ce qui, avec plusieurs autres salines, rend les eaux de la rivière Rouge très-saumâtres, lorsqu'elle est basse. En continuant de remonter, cette rivière est toujours large, mais plate et guéable."

230 [Robin, Paris, 1807, vol. 3, page 3.]

"From the Natchitoches to Yatasses the distance, reckoned by water, is twenty-five leagues; from this savage village to that of the Little Cadeaux, thirty; and from there to the Grand Cadeaux, fifty; from the Grand Cadeaux to the Taouayaches, who are located on the west bank of said river and the Ouitcitas on the east, the two villages being opposite each other, eighty leagues. Ascending the same river we find, at a distance of fifty leagues from these two villages, a rock of calcined salt, which serves to supply the natives of this region, who make commerce of it among themselves. This, with many other salt streams, renders the waters of the Red River very brackish when it is low. Higher up this river continues large, but flat and fordable."

231 EXHIBIT H. E. P. No. 15.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 15.—Extract from Schoolcraft.

(Filed Jul' 30, 1896. Court of Claims.)

232 WASHINGTON, *May 14, 1896.*

The annexed document is an accurate extract from a statement of David G. Burnet, formerly President of the Republic of Texas, made August 20, 1847, and printed in the first volume of Schoolcraft's work, page 239.

H. E. PAINE.

233 In 1 Schoolcraft, 239, will be found the following statement, made August 20, 1847, by David G. Burnet, formerly President of the Republic of Texas:

"The Whacoes, Tawacanies, Toweash, Aynies, San Pedros, Nabaduchoes, Nacadochuts, and Hitchies are small tribes, or fragments of tribes, and, separately considered, are quite insignificant. They have been long resident in Texas, and properly belong to it; but they are originally, the Hitchies excepted, of the Caddo stock, being offsets from that family. The Whacoes are the most considerable of these bands, amounting probably to 150 warriors, it being understood among Indians that every adult male is a warrior. They are a stealthy, thieving, faithless race, and have done much mischief, first and last, on our frontier. They live in a village on the Upper Brazos, and raise corn, beans, pumpkins, &c., and usually spend the winter months in hunting. The other small parties, amounting to about fifty families each, live in villages, on the waters of the Trinity and Neches, and cultivate the ground to a small extent.

"The Hitchies, once a distinct and isolated tribe, have so intermarried with their neighbor bands that they have lost their identity, and may be considered merged into the common stock. The Caddoes formerly resided on Red River of Louisiana, above Natchitoches and below the Great Reft, and were included in the jurisdiction of the Indian agency stationed, in 1819, at Natchitoches. They removed to Texas a few years ago and now claim to be Texas Indians."

234 EXHIBIT H. E. P., No. 16.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 16.—Extracts from Account of Louisiana.

(Filed Jul. 30, 1896. Court of Claims.)

235 The annexed typewritten document is an accurate extract from page 12 of An Account of Louisiana, laid before Congress by direction of the President November 14, 1803, now in the library of the Senate, and accessible, for inspection and production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

236 "AN ACCOUNT OF LOUISIANA, LAID BEFORE CONGRESS BY DIRECTION OF THE PRESIDENT OF THE UNITED STATES NOVEMBER 14TH, 1803."

On page 12 occurs the following statement:

"Red River and its settlements: On the west side of the Mississippi, 70 leagues from New Orleans, is the mouth of the Red River, on whose banks and vicinity are the settlements of Rapide, Avoyelles, and Natchitoches, all of them thriving and populous. The latter is situate 75 leagues up the Red River. On the north side of the Red River, a few leagues from its junction with the Mississippi, is the Black River, on one of whose branches, a considerable way up, is the infant settlement of Ouchita, which, from the richness of the soil, may be made a place of importance."

On pages 34, 35, and 36 of the same work will be found the following statements:

"About eighty leagues above Nachitoches, on the Red River, is the nation of the Cadoquies, called, by abbreviation, Cados. They can raise from three to four hundred warriors, are the friends of the whites, and are esteemed the bravest and most generous of all the nations in this vast country. * * *"

"Between the Red River and the Arkansas there are but a few
237 Indians, the remains of tribes almost extinct. On this last river is the nation of the same name, consisting of about two hundred and sixty warriors. They are brave, yet peaceable and well disposed, and have always been attached to the French, who espoused their cause in their wars with the Chickasaws, whom they have always resisted with success. They live in three villages. The first is at eighteen leagues from the Mississippi on the Arkansas River, and the others are at three and six leagues from the first."

238 EXHIBIT H. E. P., No. 19.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 19.—Extract from Kennedy's Texas.

(Filed Jul. 30, 1896. Court of Claims.)

239 WASHINGTON, D. C., *May 14, 1896.*

The annexed document is an accurate extract from page 349, volume 1, of Kennedy's Texas, published in 1841.

H. E. PAINE.

240 [Kennedy's Texas, 1841, vol. 1, p. 349.]

"In alliance with the Wacos were the Pawnee Picts, or Toweashes, residing on the Red River, sometimes on the side of the United States and sometimes in Texas."

241 EXHIBIT H. E. P., No. 21.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 21.—Extract from French's Historical Collections.

(Filed Jul. 30, 1896. Court of Claims.)

242 The annexed typewritten document is an accurate extract from part 1, page 2, of French's Historical Collections of Louisiana. Said work is now in the Library of Congress, and is accessible, for inspection and production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

243 [French's Historical Collections of Louisiana, New York, 1846.]

At page 72, of part 1, appears the following statement in the English language, purporting to be a translation of Tonti's narrative:

"We set off on the 12th with 12 Taencas, and after a voyage of twelve leagues to the N.W. we left our boat and made twenty leagues

ortage, and on the 17th of February, 1690 (1688?), came to Nachito-
es. They made us stay at the place, which is in the midst of the three
llages called Nachitoches, Ouasita, and Capiché. The chiefs of the
ree nations assembled, and before they began to speak the 30 Taencas
ho were with me got up, and, leaving their arms, went to the temple to
ow how sincerely they wished to make a solid peace."

44 EXHIBIT H. E. P., No. 22.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal No. 22.—Extract from deposition of Urban Gebhart.

(Filed July 30, 1896. Court of Claims.)

45 WASHINGTON, *July 15, 1896.*

The annexed document consists of accurate extracts from the eposition of Urban Gebhart, taken from pages 693, 694, 695 of the ecord of the case of The United States *v.* The State of Texas, now in the ibrary of Congress.

H. E. PAINE.

46 [Extracts from the deposition of Urban Gebhart, record, United States *v.* Texas, pages 693, 694, 695.]

"5. Q. Where was Camp Radzyminski located when you first got here?

"A. When we first arrived it was located down about—it may have been twenty miles or eighteen miles from the hills, on the creek called Otter Creek.

"6. Q. When you say eighteen or twenty miles from the 'hills,' what hills do you mean?

"A. I mean the Wichita Mountains. * * *

"8. Q. Where did you move to then?

"A. We moved about three or four miles higher up on the same creek.

"9. Q. What creek was that?

"A. Otter Creek. * * *

"12. Q. Where did you go after that?

"A. Then we went to the foot of the mountains. * * *

47 "1. X Q. How many camps were there that were called Radziminski?

"A. There were three camps, sir.

"2. X Q. You were at all of them?

"A. At all three camps; yes, sir."

248 EXHIBIT H. E. P., No. 24.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 24.—Tracing from H. Popple's map, 1741.

(Filed July 30, 1896. Court of Claims.)

249 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from H. Popple's map, contained in an atlas entitled "Atlas Nouveau," purporting to have been published at Amsterdam in 1741, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 250.)

251 EXHIBIT H. E. P., No. 25.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 25.—Tracing from old American maps, Vol. 2, No. 21.

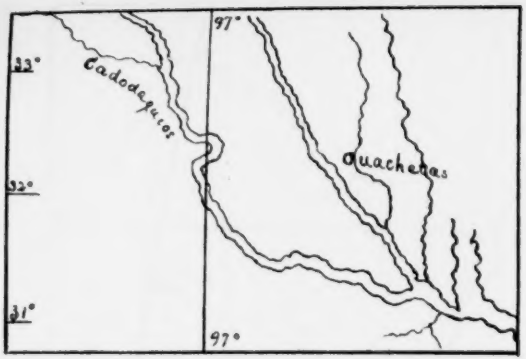
(Filed July 30, 1896. Court of Claims.)

252 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from a map contained in "Old American Maps," volume 2, 1755, now in the Library of Congress.

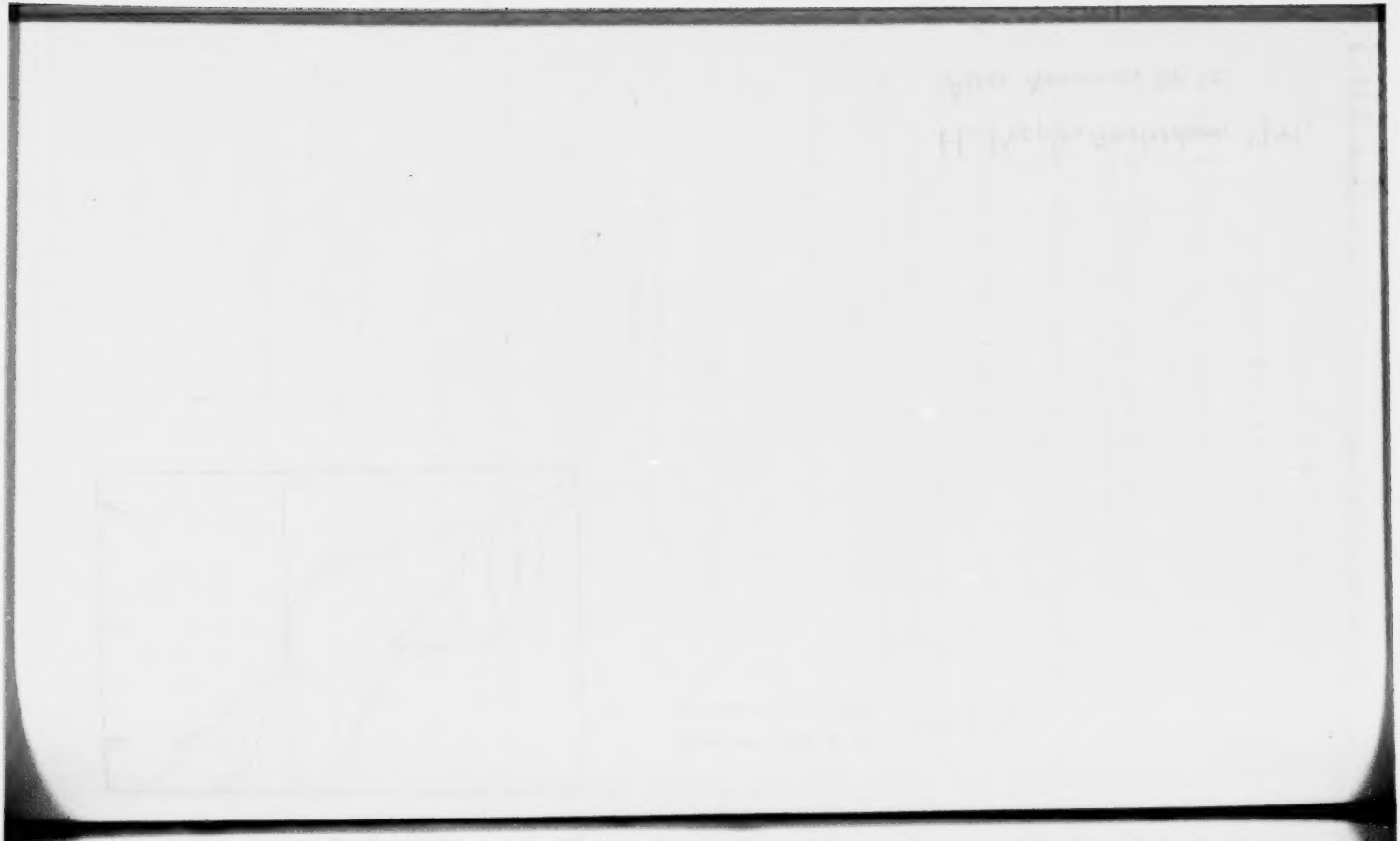
H. E. PAINE.

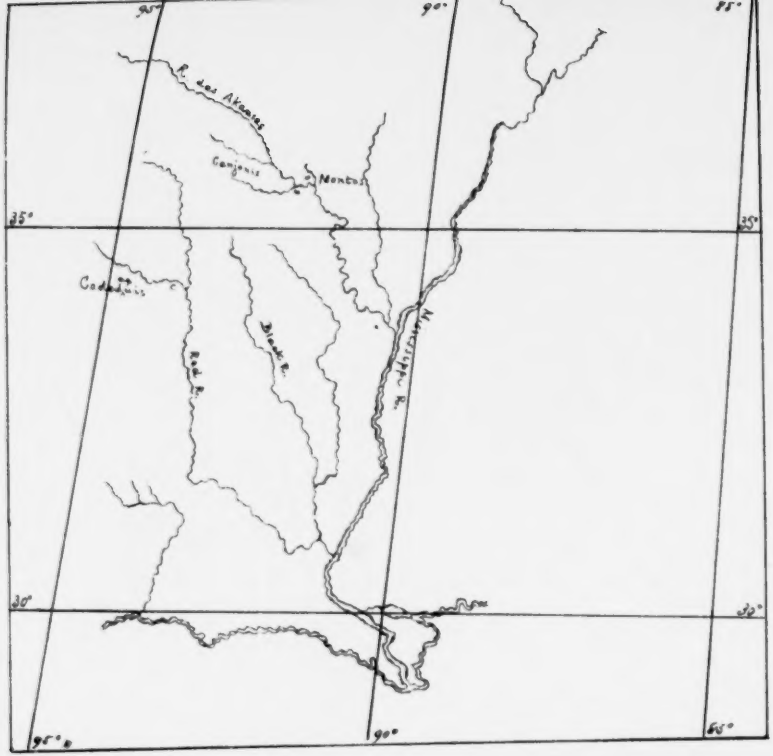
(Here follows diagram marked p. 253.)



H. Popple, Amsterdam, 1741,
Atlas Nouveau, No. 34.

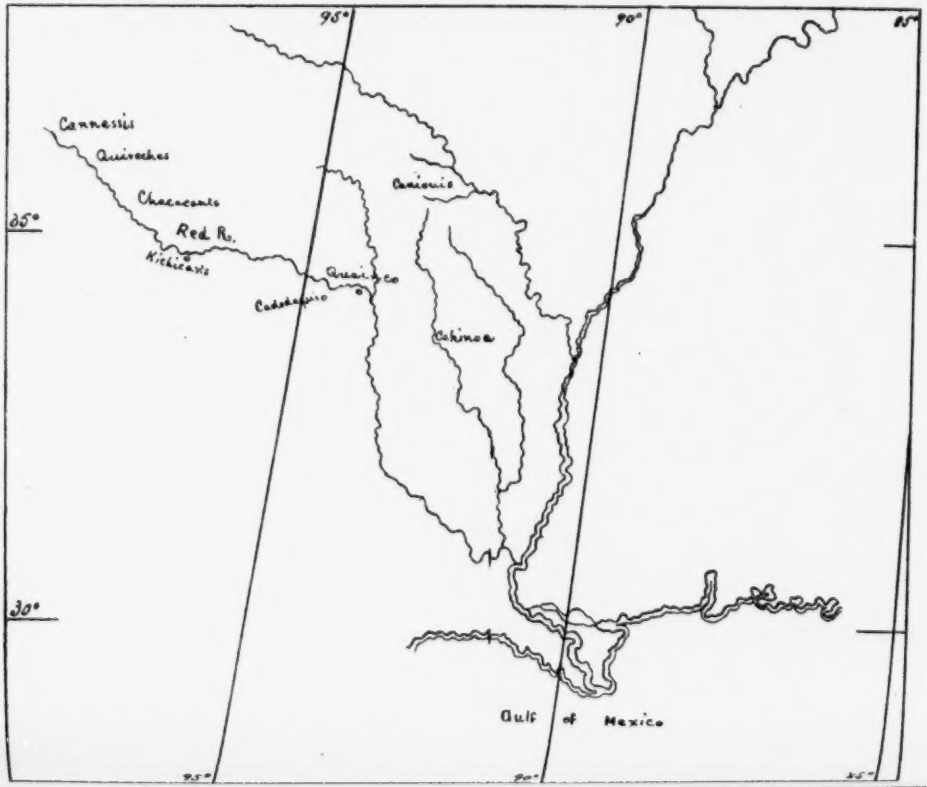
Ex. 1198





Old American Maps, Vol 2, No. 21, 1795.
Library of Congress

1134



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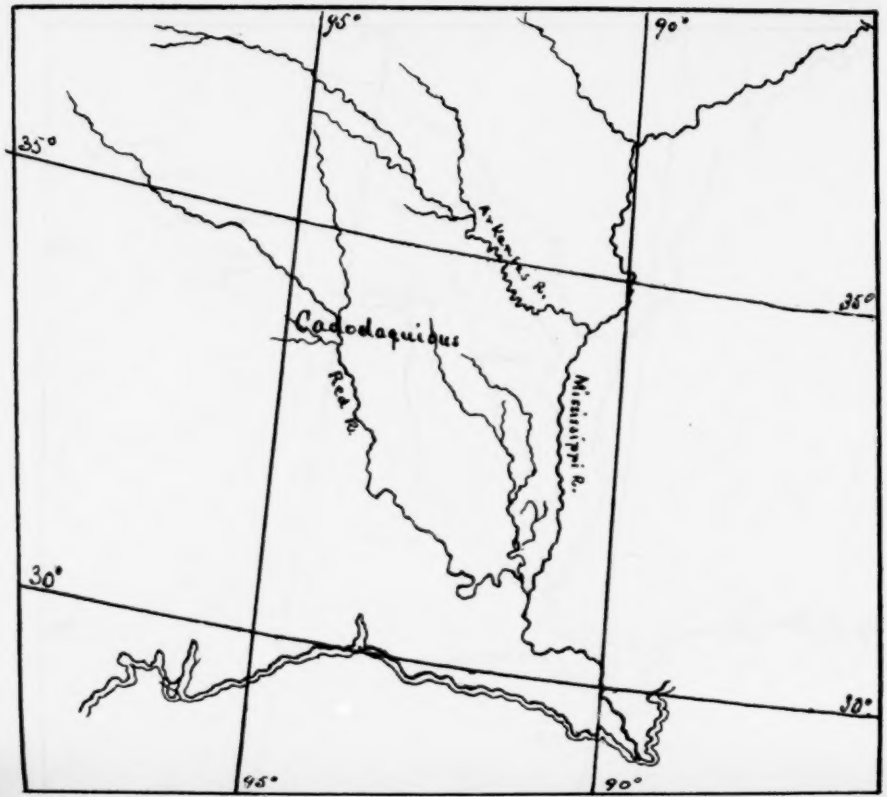
October Term, 1899.
Page 256

J. Palairet, London, 1769
Old American Maps, Vol 2,
No. 28. Library of Congress.



John Roque, London, 1761.
American Atlas, No. 2.

254 EXHIBIT H. E. P., No. 26.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 26.—Tracing from J. Palairet's map, 1759.

(Filed July 30, 1896. Court of Claims.)

255 WASHINGTON, *May 14, 1896.*

The annexed map is an accurate tracing from J. Palairet's map, published in London in 1759, contained in volume 2 of Old American Maps, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 256.)

257 EXHIBIT H. E. P., No. 27.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal No. 27.—Tracing from John Roque's map, 1761.

(Filed July 30, 1896. Court of Claims.)

258 WASHINGTON, *May 14, 1896.*

The annexed map is an accurate tracing of John Roque's map, published in London in 1761, contained in "American Atlas," now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 259.)

260 EXHIBIT H. E. P., No. 28.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 28.—Tracing from E. Bowe map, 1772.

(Filed July 30, 1896. Court of Claims.)

261 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from E. Bowen's ma London, 1772, contained in Old American Maps, volume 2, now in t Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 262.)

263 EXHIBIT H. E. P., No. 29.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 29.—Tracing from D'Anville map, 1772.

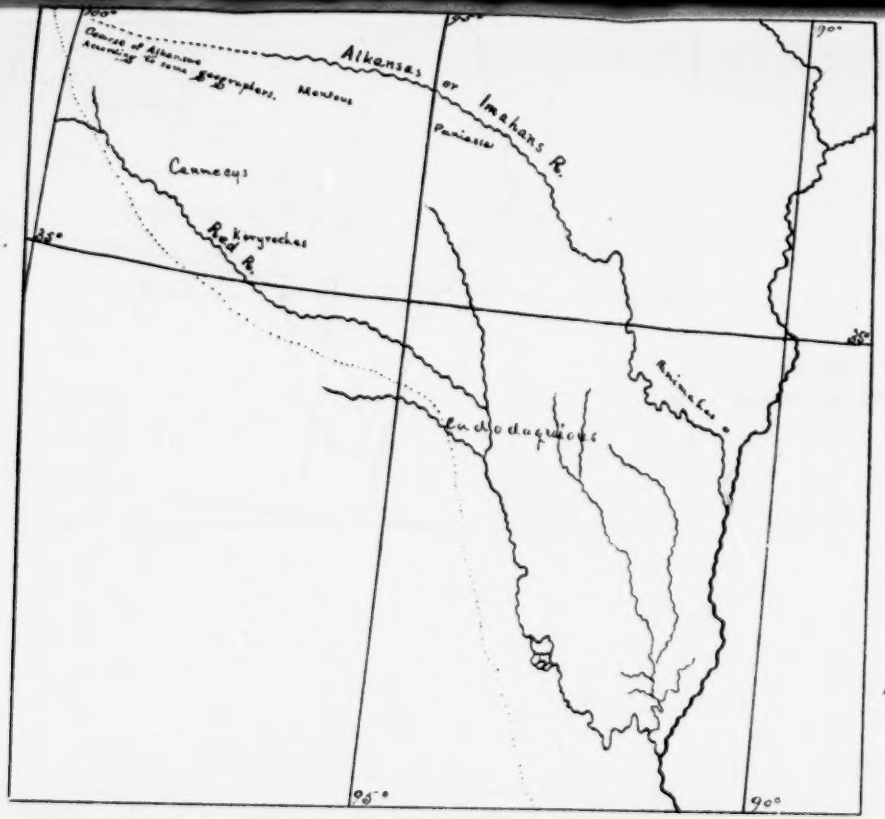
(Filed July 30, 1896. Court of Claims.)

264 WASHINGTON, *May 14, 1896.*

The annexed map is an accurate tracing of D'Anville's map published in 1772, contained in volume 2 of Old American Maps, no in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 265.)



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October Term, 1899.
Page 262

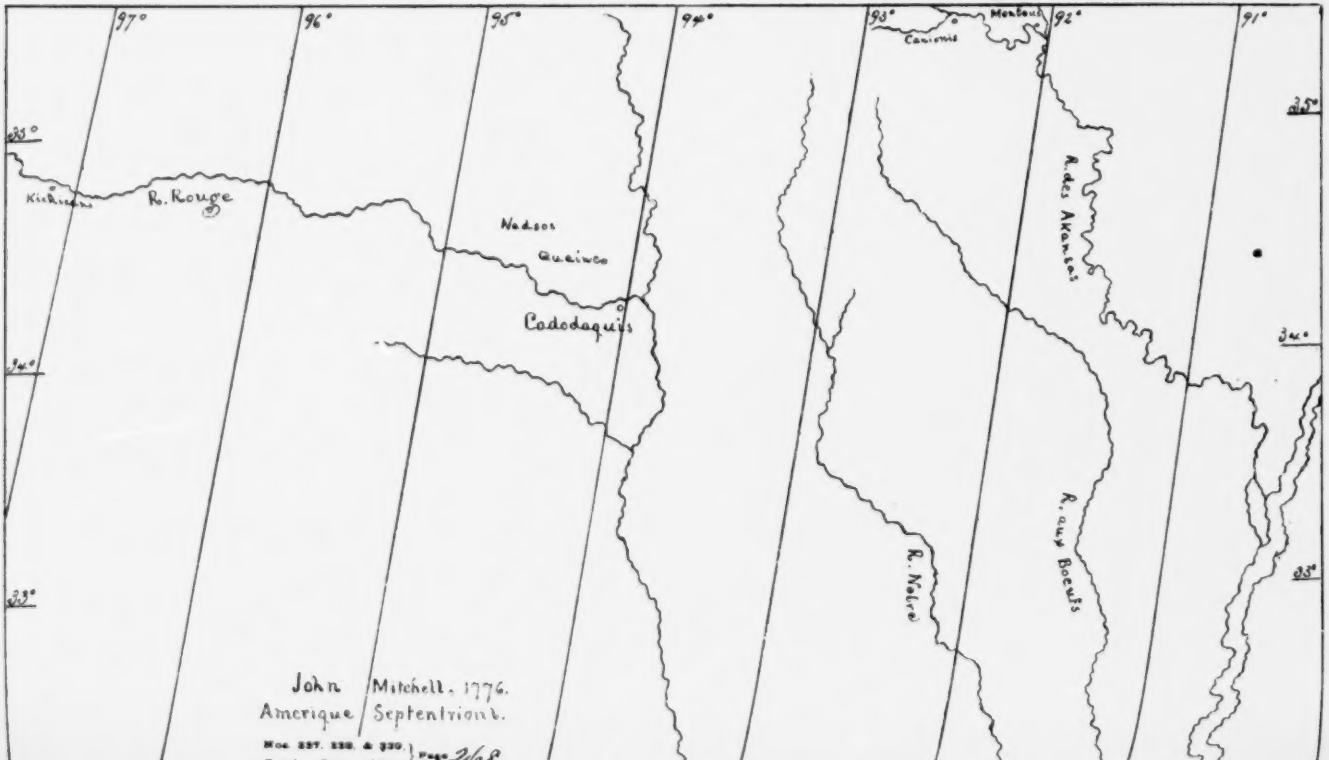
E. Bowen, London, 1772, Old American Maps, Vol. 2, No. 26, Library of Congress.

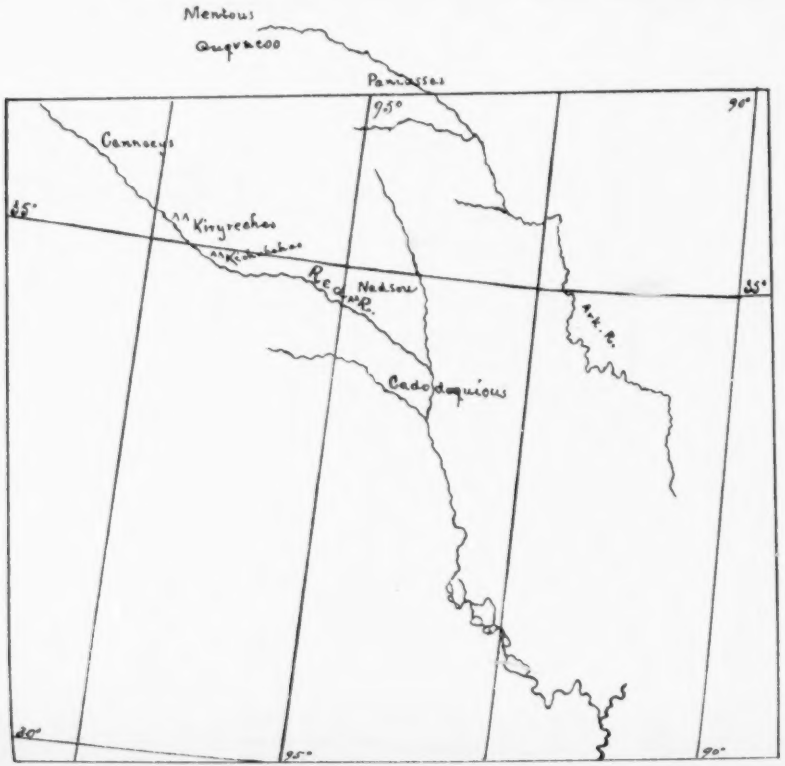
1198

Nos. 337, 338, & 339, October Term, 1899. } Page 265

D°Anville, 1772, Old American Maps, Vol. 2, No. 81. Library of Congress.

11199


97°
96°
95°
94°
93°
92°
91°
35°
34°
33°
Caouis
Natchitoches
R. Rouge
Nadaos
Quelques
Cadodaquis
R. des Akansas
R. aux Boeufs
R. Noire
John Mitchell. 1776.
Amerique Septentrionle.



Nos. 337, 338, & 339.
October Term, 1899.
Page 271

"A New & Correct Map of North America,
London, 1777.
Jeffery's American Maps, No. 5.

Exhibit H. E. P., No. 30.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants..

Claimants' evidence in rebuttal, No. 30.—Tracing from John Mitchell's map, 1776.

(Filed July 30, 1896. Court of Claims.)

WASHINGTON, D. C., *May 13, 1896.*

The annexed map is an accurate tracing from a map in John Mitchell's atlas, entitled Amerique Septrional, published in London in 1776, and now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 268.)

Exhibit H. E. P., No. 31.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 31.—Tracing from Jeffery's map, 1777.

(Filed July 30, 1896. Court of Claims.)

WASHINGTON, D. C., *May 13, 1896.*

The annexed map is an accurate tracing from a map entitled "A new and correct map of North America," in Jeffery's American Maps, published in London in 1777, and now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 271.)

272 EXHIBIT H. E. P., No. 32.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 32.—Tracing from G. L. Le Rouge's map, 1778.

(Filed July 30, 1896. Court of Claims.)

273 WASHINGTON, *May 14, 1896.*

The annexed map is an accurate tracing from a map in G. L. Le Rouge's "Atlas, Ameriquain Septentrional," published in Paris in 1778, and now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 274.)

275 EXHIBIT H. E. P., No. 33.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 33.—Tracing from T. Pownall's map, 1794.

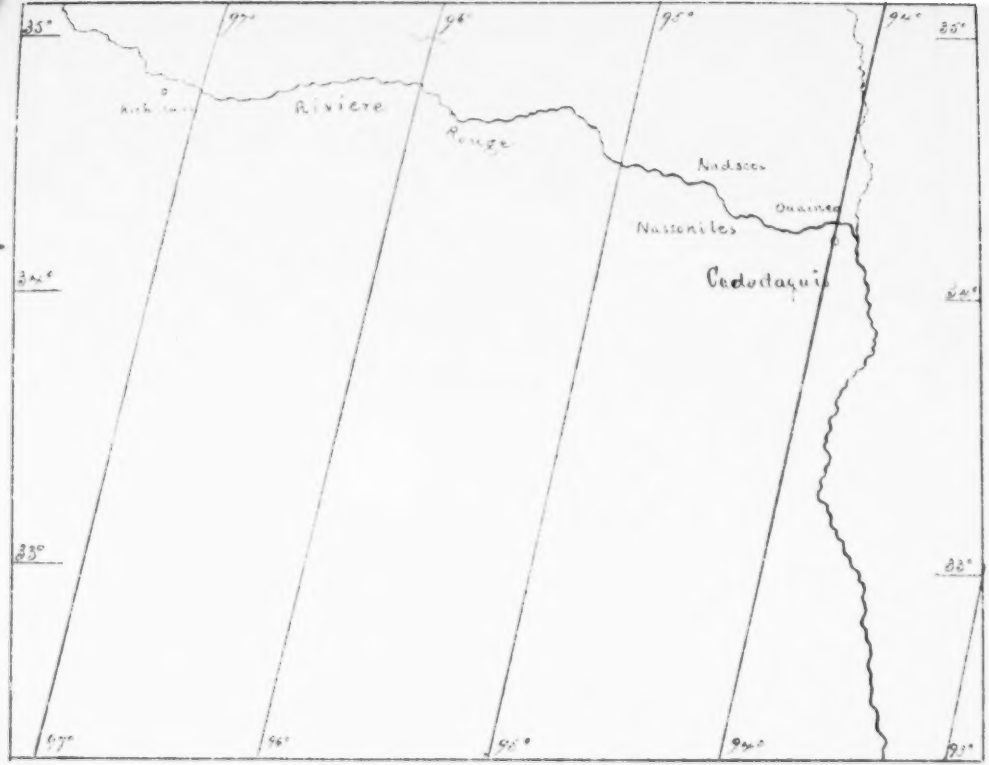
(Filed July 30, 1896. Court of Claims.)

276 WASHINGTON, *May 14, 1896.*

The annexed map is an accurate tracing from T. Pownall's map published in London in 1794, contained in volume 2 of Old American Maps, in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 277.)



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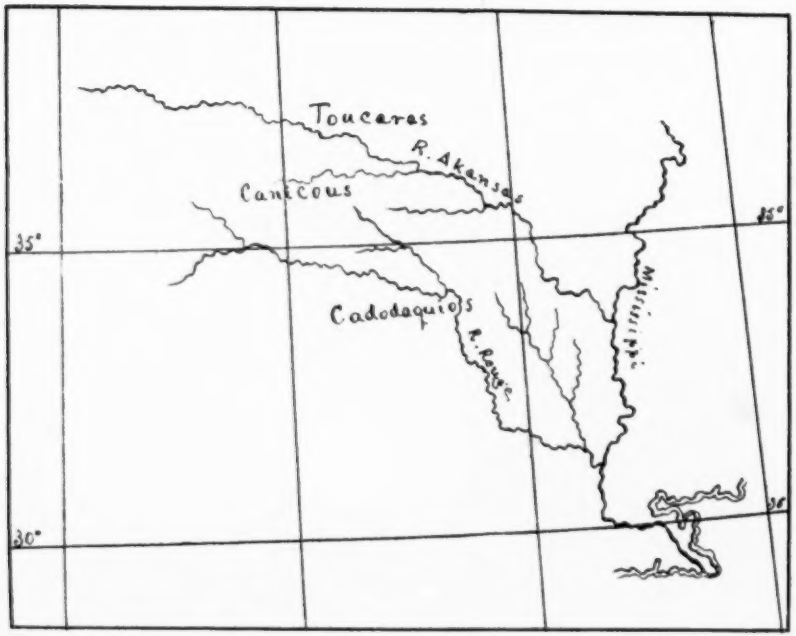
October Term, 1899 } Page 274

Atlas Ameriquain Septentrional
G. L. LeRouge. No. 2, Paris, 1778

337
338
339

T. Pownall, London, 1794, Old American Maps, Vol. 2, No 36, Library of Congress.

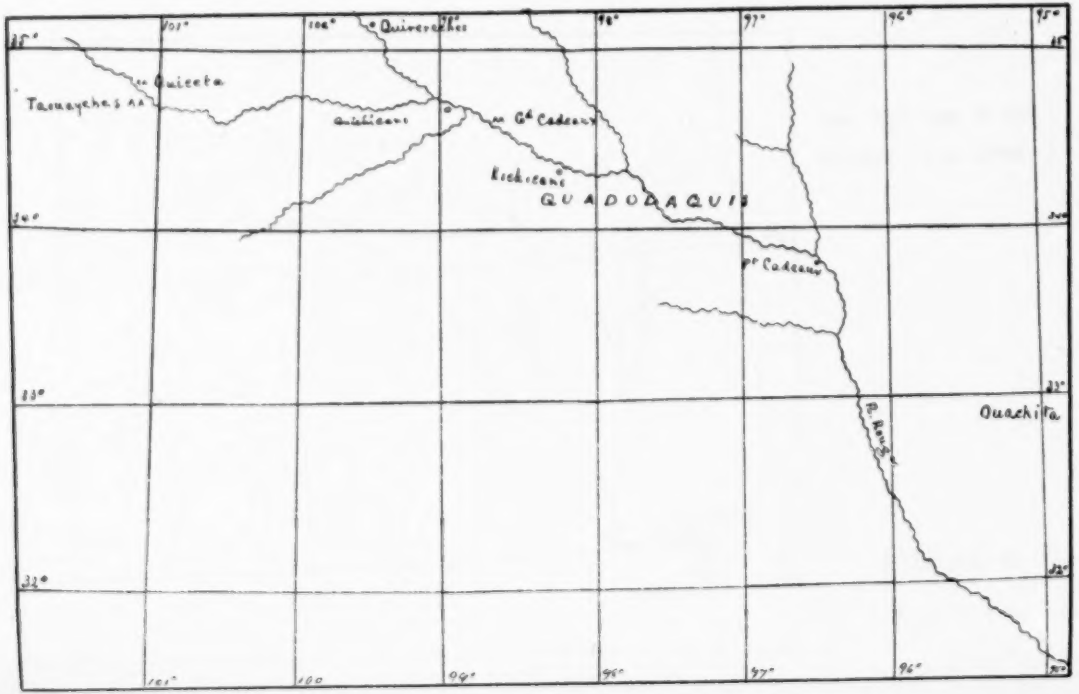
1204



Nos. 337, 338, & 339,
October Term, 1899.
Page 280

Prefixed to Baudry des Lozieres
"Voyage to Louisiana", 1794, 1798.
Published 1802.

11206



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October Term, 1899. } Page 283

Attached to Vol. 2, Robin's Travels in Louisiana.

EXHIBIT H. E. P., No. 34.

United States Court of Claims.

CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
UNITED STATES AND THE WICHITA d affiliated bands of Indians, defendants.

nants' evidence in rebuttal, No. 34.—Tracing from Des Lozieres' map, 1802.

iled Jul. 30, 1896. Court of Claims.)

WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from a map prefixed to ry des Lozieres' "Voyage to Louisiana," 1794, 1798, published in , now in the Library of Congress.

H. E. PAINE.

lere follows diagram marked p. 280.)

EXHIBIT H. E. P., No. 35.

United States Court of Claims.

CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
UNITED STATES AND THE WICHITA d affiliated bands of Indians, defendants.

nants' evidence in rebuttal, No. 35.—Tracing from Robin's map, 1806.

iled Jul. 30, 1896. Court of Claims.)

WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from a map attached to econd volume of Robin's Travels in Louisiana, now in the Library ongress.

H. E. PAINE.

lere follows diagram marked p. 283.)

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284 EXHIBIT H. E. P., No. 36.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 36.—Tracing from Arrowsmith and Lewis' map, 1812.

(Filed Jul. 30, 1896. Court of Claims.)

285 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from a map of Arrowsmith and Lewis, published in Boston in 1812, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 286.)

287 EXHIBIT H. E. P., No. 37.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 37.—Tracing from Pinkerton's map, 1818.

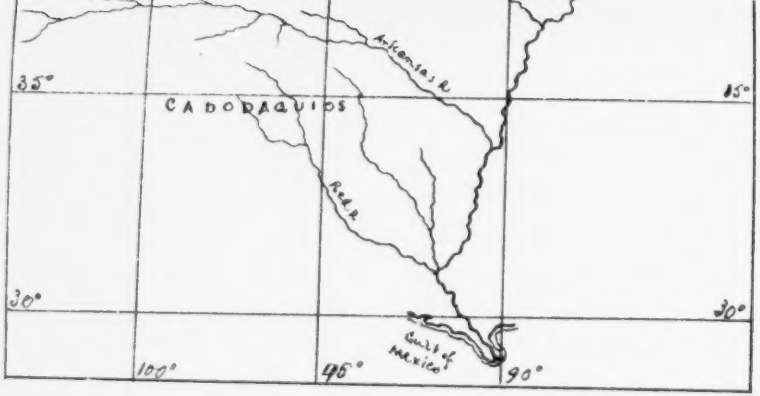
(Filed Jul. 30, 1896. Court of Claims.)

288 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from the map of John Pinkerton, published in London in 1815, in Philadelphia in 1818, and now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 289.)



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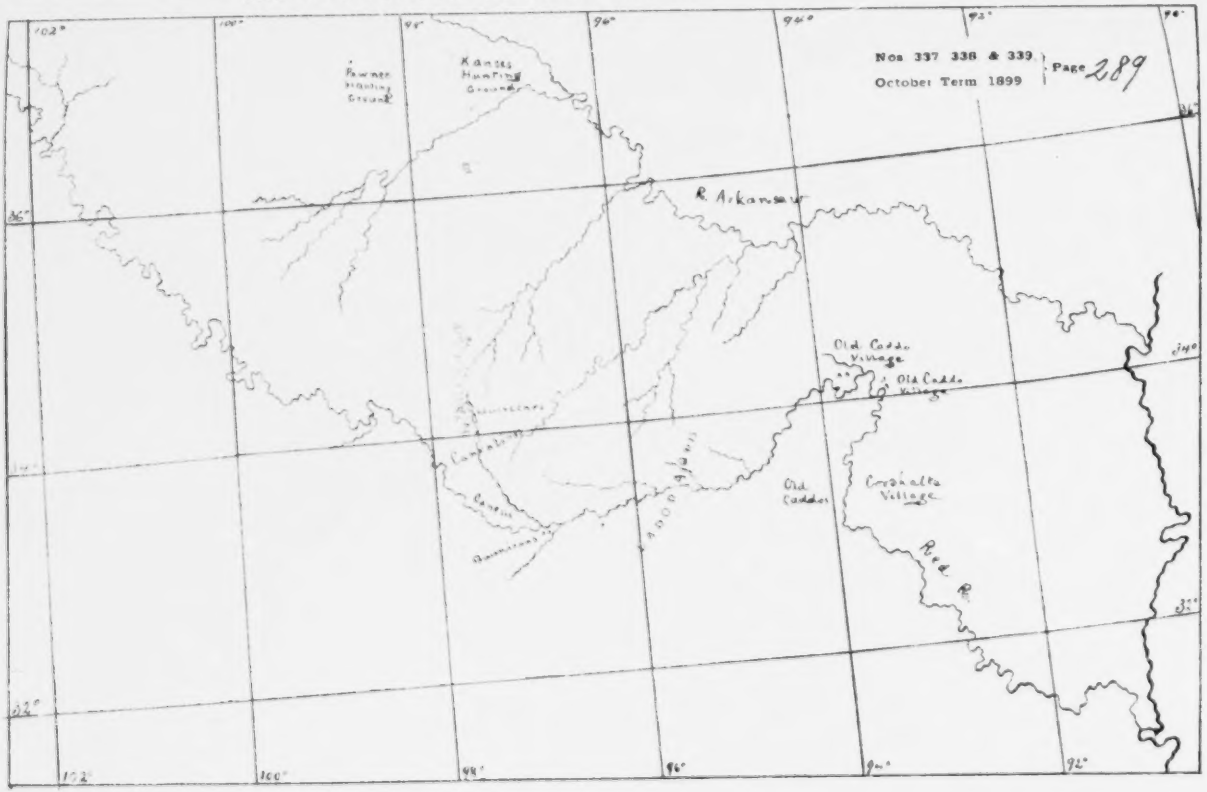
October Term, 1899. } Page 286

Arrowsmith and Lewis, Boston, 1812. No. 52.

11208

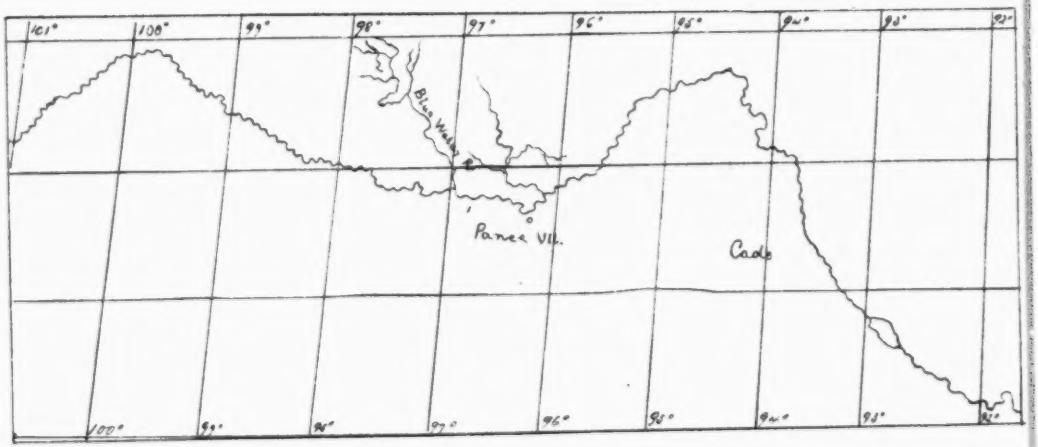
John Pinkerton, Modern London, 1810, Philadelphia, 1818



11209

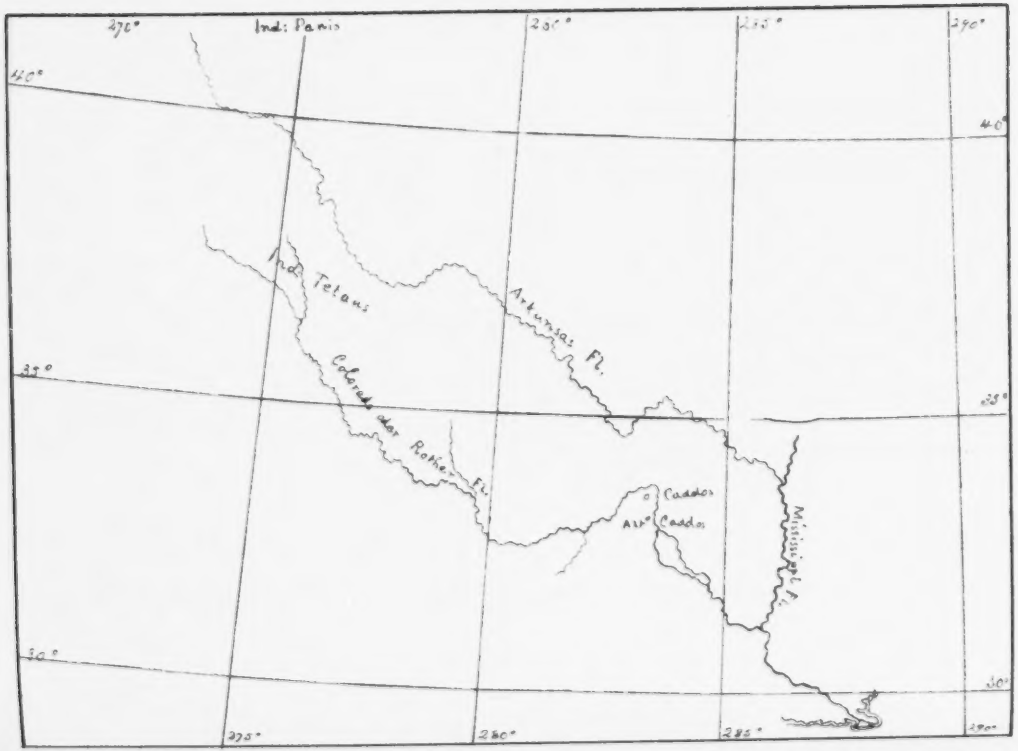
Nos. 337, 338, & 339
October Term, 1899

Page 292



John Melish, 1818,
U.S. v. Texas, Vol. 2, page 1392.

1121



Nos. 337, 338 & 339
October Term, 1899 } Page 295

J. Dirwald,
Vienna, 1822.

290 EXHIBIT H. E. P., No. 38.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 38.—Tracing from Melish's map, 1818.

(Filed Jul. 30, 1896. Court of Claims.)

291 The map hereto attached is an accurate tracing from Melish's map, 1818, contained in the record of the case of The United States v. Texas, No. 4 original, at page , volume . Said volume and map are now in the Library of Congress, and are accessible, for inspection and production in court on the trial, to all the attorneys and counsel in this cause. The annexed tracings include everything shown on said map pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 292.)

293 EXHIBIT H. E. P., No. 39.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 39.—Tracing from Dirwald's map, 1823.

(Filed Jul. 30, 1896. Court of Claims.)

294 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from S. Dirwald's map, purporting to have been published in Vienna in 1823, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 295.)

296 EXHIBIT H. E. P., No. 41.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 41.—Tracing from Austin's map, 1830.

(Filed Jul. 30, 1896. Court of Claims.)

297 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing of Stephen F. Austin's map, published at Philadelphia, in 1830, by H. S. Tanner, and now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 298.)

299 EXHIBIT H. E. P., No. 42.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 42.—Tracing from Outline Indian Localities, 1833.

(Filed Jul. 30, 1896. Court of Claims.)

300 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing of an Outline of Indian Localities in 1833, contained in the record of the case of The United States v. The State of Texas, volume 1, page 170, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 301.)

S. F. Austin, Published by H. S. Tanner, Philadelphia, 1830.

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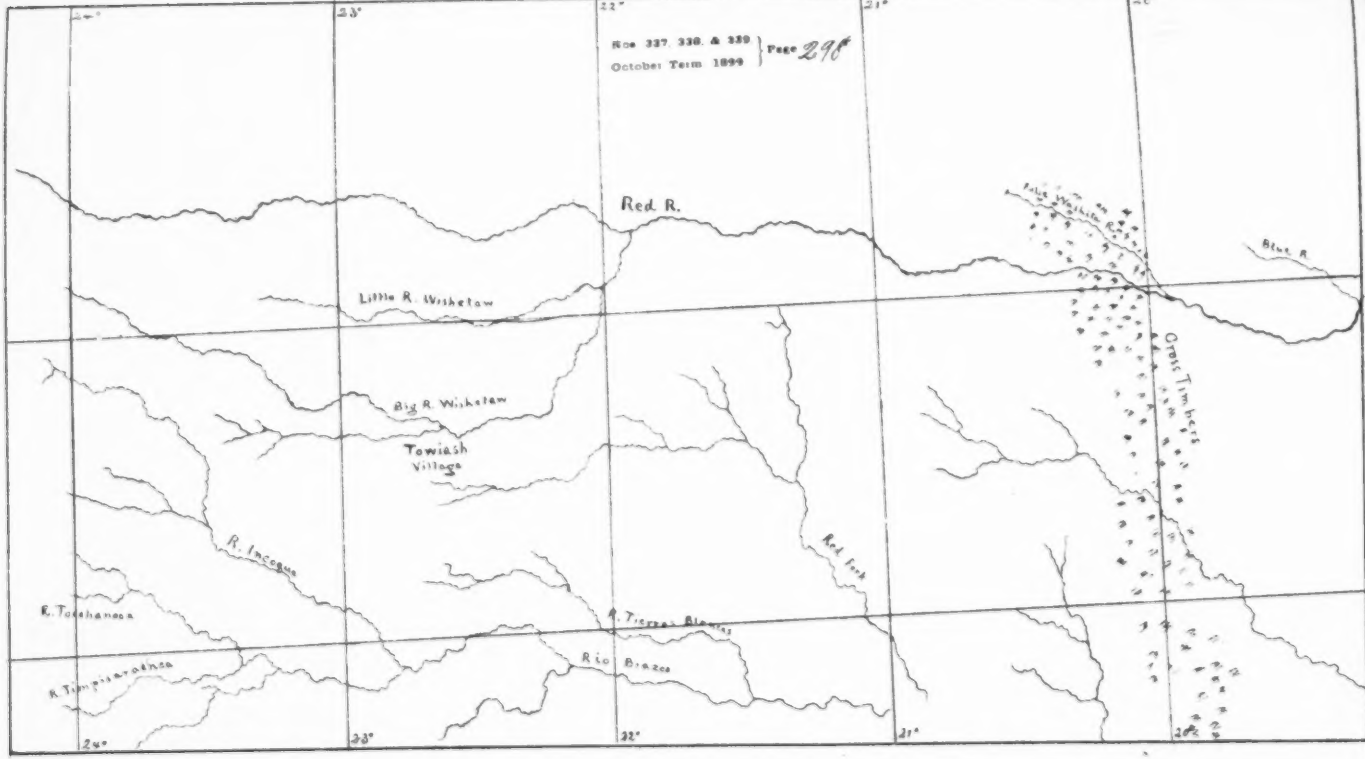
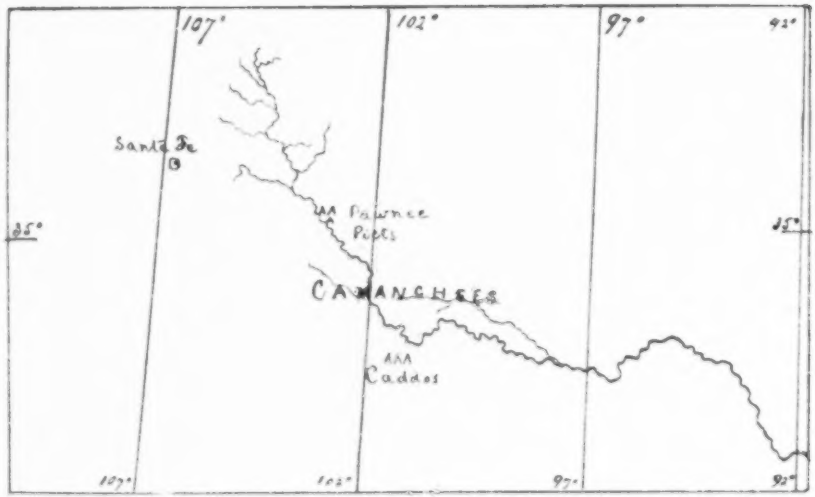


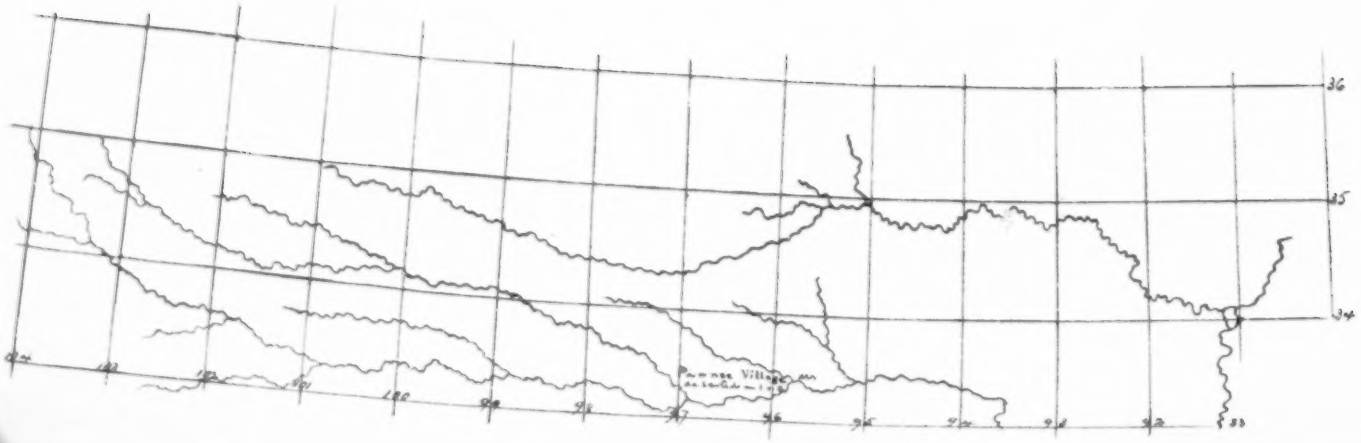


Nos 337, 338, & 339,
October Term, 1899. } Page 301

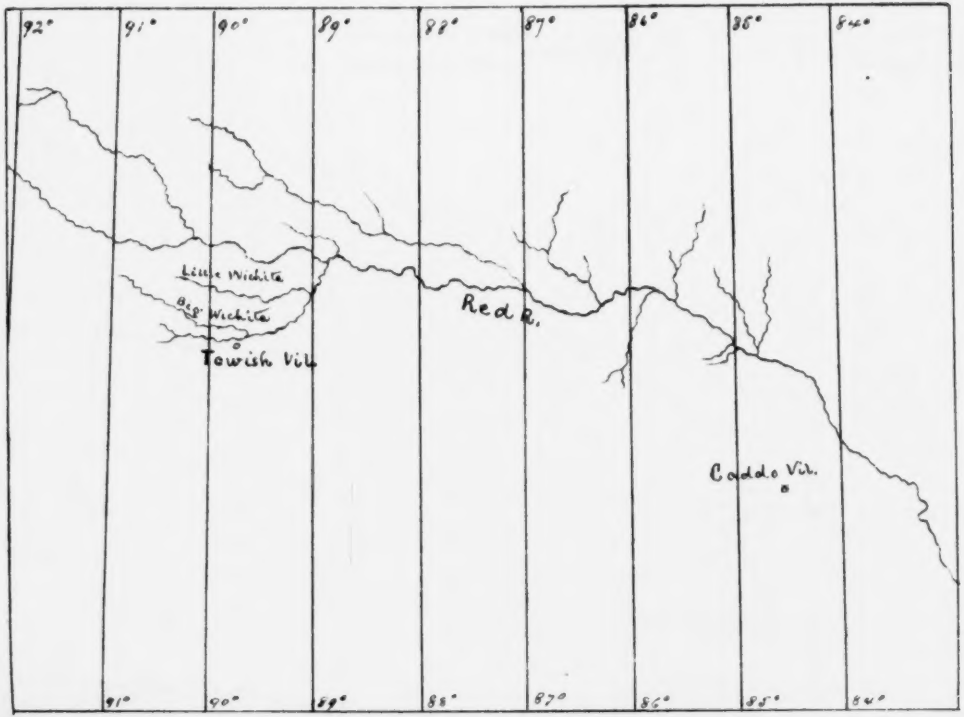
Outline, Indian Localities, 1833,
U.S. v. Texas Vol. 1, page 170.

1214

Maj. S. H. Long, 1834
U.S. v. Texas, Vol. 3, page 30



11216



E. F. Lee, 1886,
U.S. v. Texas, Vol. I, p. 184.

302 EXHIBIT H. E. P., No. 43.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 43.—Tracing from Maj. S. H. Long's map, 1834.

(Filed Jul. 30, 1896. Court of Claims.)

303 WASHINGTON, D. C., *May 13, 1896.*

The annexed map is an accurate tracing from Maj. S. H. Long's map of 1834, contained in the record of the case of The United States *v.* The State of Texas, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 304.)

305 EXHIBIT H. E. P., No. 44.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 44.—Tracing from E. F. Lee's map, 1836.

(Filed Jul. 30, 1896. Court of Claims.)

306 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from E. F. Lee's map, published in 1836, and contained in the record of the case of The United States *v.* Texas, volume 1, page 184.

H. E. PAINE.

(Here follows diagram marked p. 307.)

308 EXHIBIT H. E. P., No. 45.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 45.—Tracing from Young's map of Texas, 1836.

(Filed Jul. 30, 1896. Court of Claims.)

309 The annexed map is an accurate tracing from Young's map of Texas, 1836, contained in the record of the case of The United States v. Texas, No. 4 Original, at page 294, volume 1. Said volume and map are now in the Library of Congress, and are accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 310.)

311 EXHIBIT H. E. P., No. 46.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

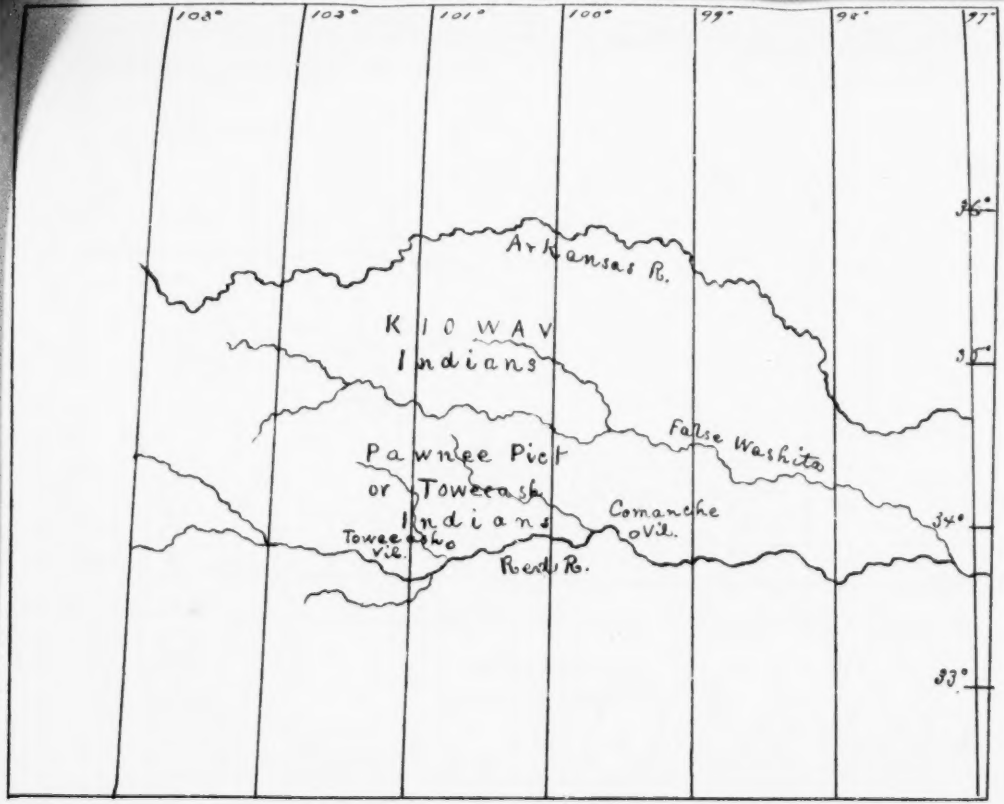
Claimants' evidence in rebuttal, No. 46.—Tracing from Austin's Texas land office map, 1837.

(Filed Jul. 30, 1896. Court of Claims.)

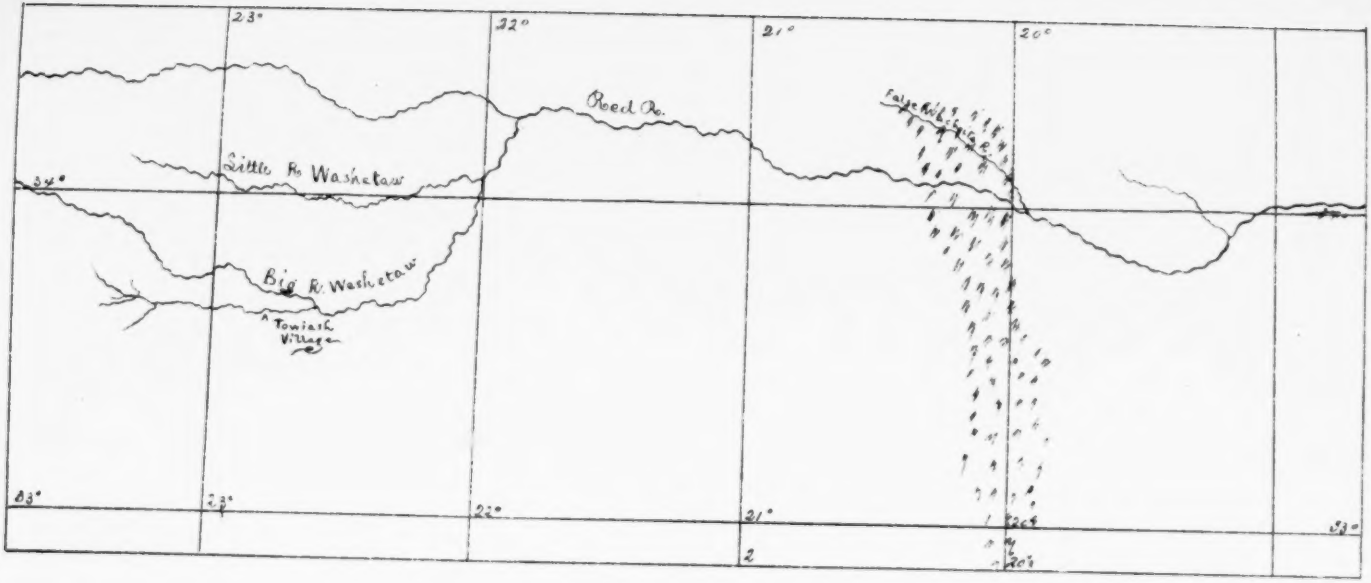
312 The annexed map is an accurate tracing from Austin's Texas land office map, 1837, contained in the record of The United States v. Texas, No. 4 Original, at page 292 of volume 1. Said volume and map are now in the Library of Congress, and are accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown by said map pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 313.)

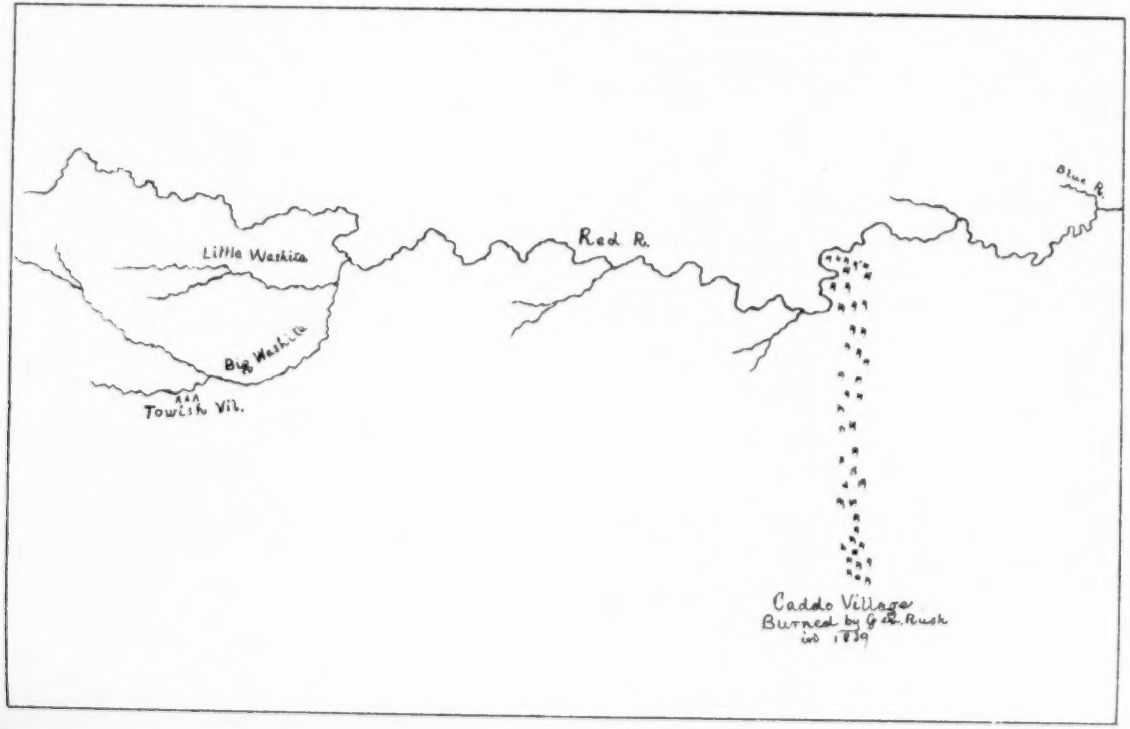


Young, 1836, U.S. v. Texas
page 294.



Nos. 337, 338, & 339, October Term, 1899. } Page 313

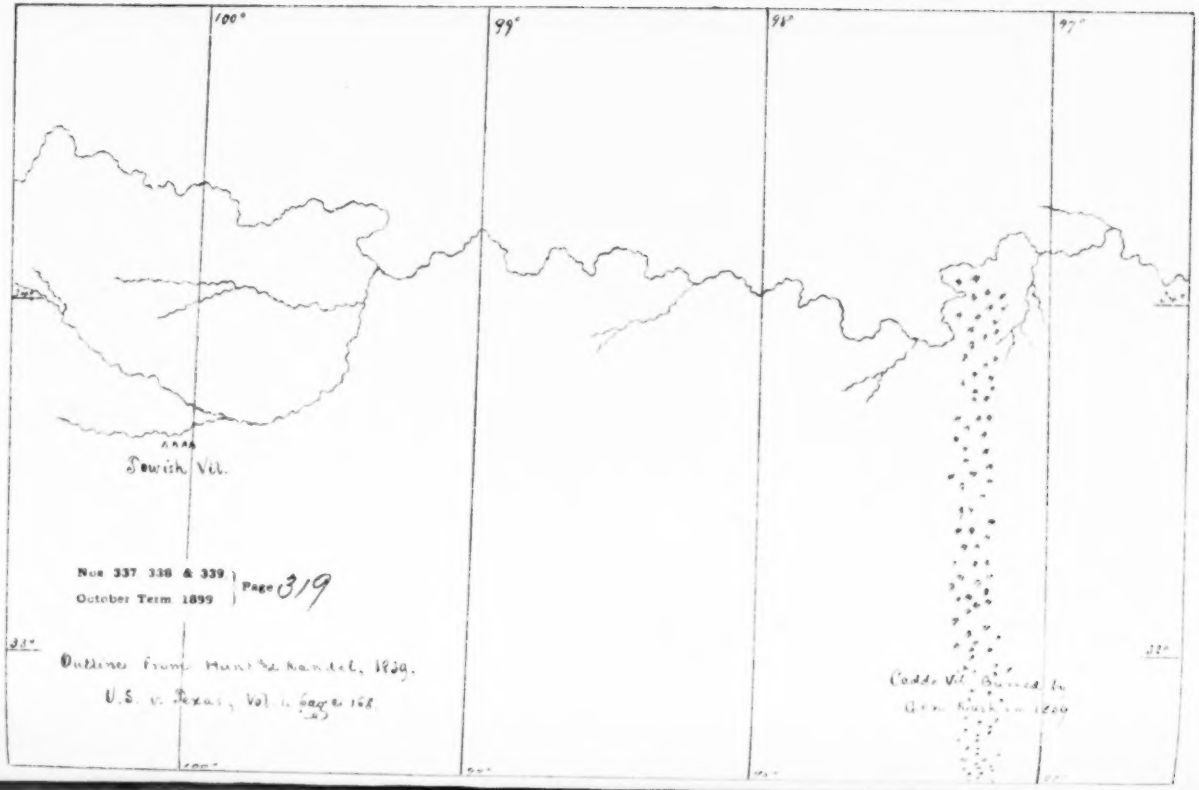
S. F. Austin. Published by H. S. Tanner, 1837, U. S. v. Texas, Vol. I, p. 292.



Nos. 337, 338, & 339.
October Term, 1899. } Page 316

Hunt & al v. Randel, 1839,
U. S. v. Texas, page 1016.

11221


100°
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97°
33°
Dowish Vil.
Nos 337 338 & 339
October Term 1899
Page 319
Outline from Hunt's Report, 1839.
U.S. v. Texas, Vol. 1, page 168
Caddo Vil. Burned by
Gen. Rusk in 1839

314 EXHIBIT H. E. P., No. 47.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 47.—Tracing from Hunt and Randel's map, 1839.

(Filed Jul. 30, 1896. Court of Claims.)

315 The annexed map is an accurate tracing from Hunt and Randel's map, 1839, contained in the record of the case of the United States v. Texas, No. 4 original, at page 1016, volume 2. Said volume and map are now in the Library of Congress, and are accessible, for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracing includes everything shown on said map pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 316.)

317 EXHIBIT H. E. P., No. 48.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 48.—Tracing from outline, Hunt and Randel, 1839.

(Filed Jul. 30, 1896. Court of Claims.)

318 WASHINGTON, *May 13, 1896.*

The annexed map is a tracing from an outline from Hunt and Randel's map, purporting to have been published in 1839, contained in the record of the case of the United States v. Texas, volume 1, page 168.

H. E. PAINE.

(Here follows diagram marked p. 319.)

320 EXHIBIT H. E. P., No. 49.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 49.—Tracing from Kennedy's ma No. 1, 1841.

(Filed Jul. 30, 1896. Court of Claims.)

321 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from a map prefix to "Kennedy's Texas," purporting to have been published in 1841, n in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 322.)

323 EXHIBIT H. E. P., No. 50.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 50.—Tracing from Kennedy's ma No. 2, 1841.

(Filed Jul. 30, 1896. Court of Claims.)

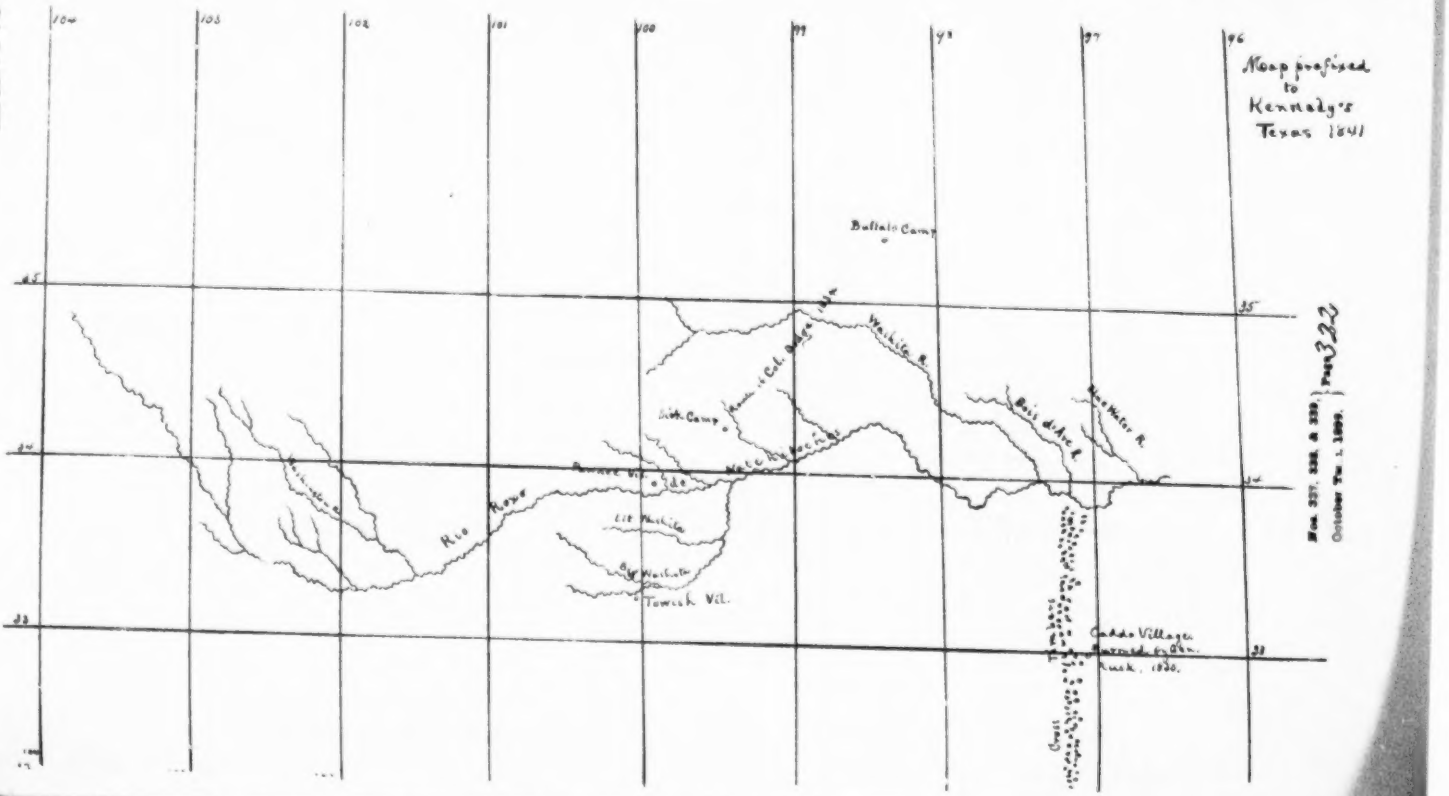
323½ WASHINGTON, *May 13, 1896.*

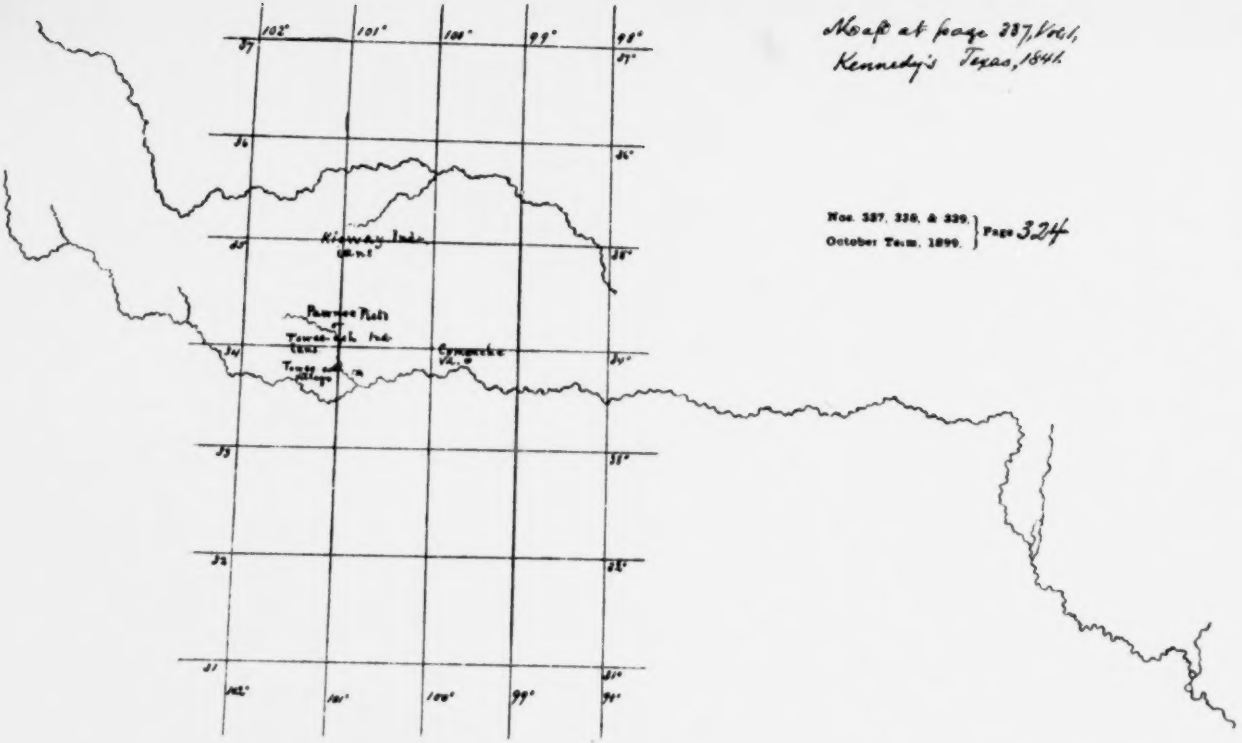
The annexed map is an accurate tracing from a map appearin at page 337 of volume 1 of Kennedy's Texas, purporting to have bee published in 1841, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 324.)

11223


Map prefixed to Kennedy's Texas 1841
Buffalo Camp
Walnut R.
Red R.
Towash Vil.
Caddo Villages
Red Water R.
Bois d'Arc R.
Sen. Ex. Doc. No. 224, 25th Cong. 2d Sess.
October Ter. 1838.
Page 322



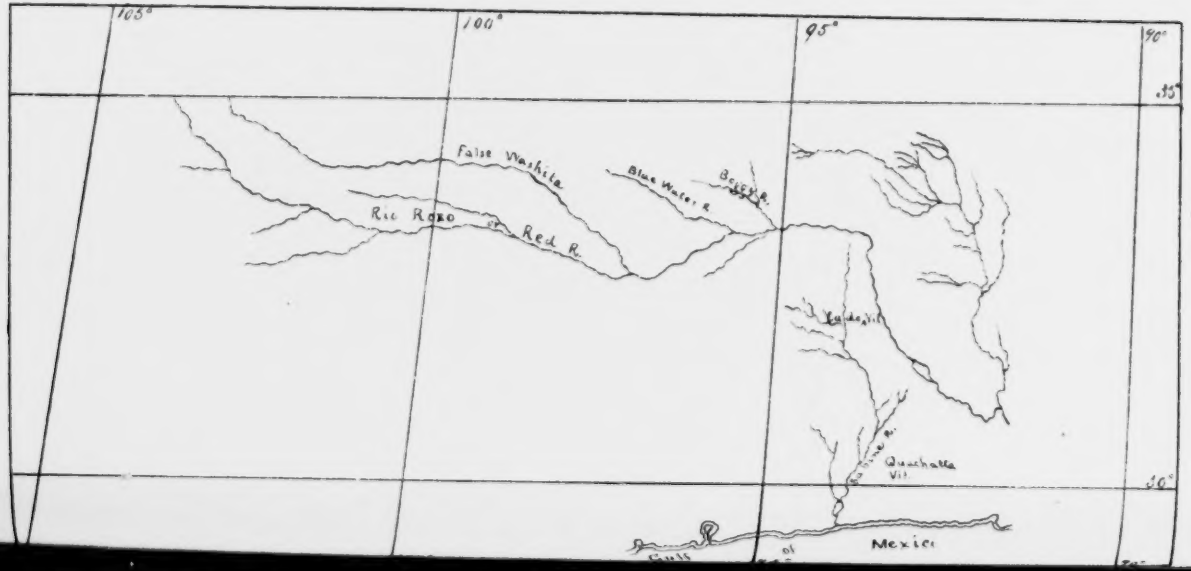
Map at page 337, Vol. I, Kennedy's Texas, 1841.

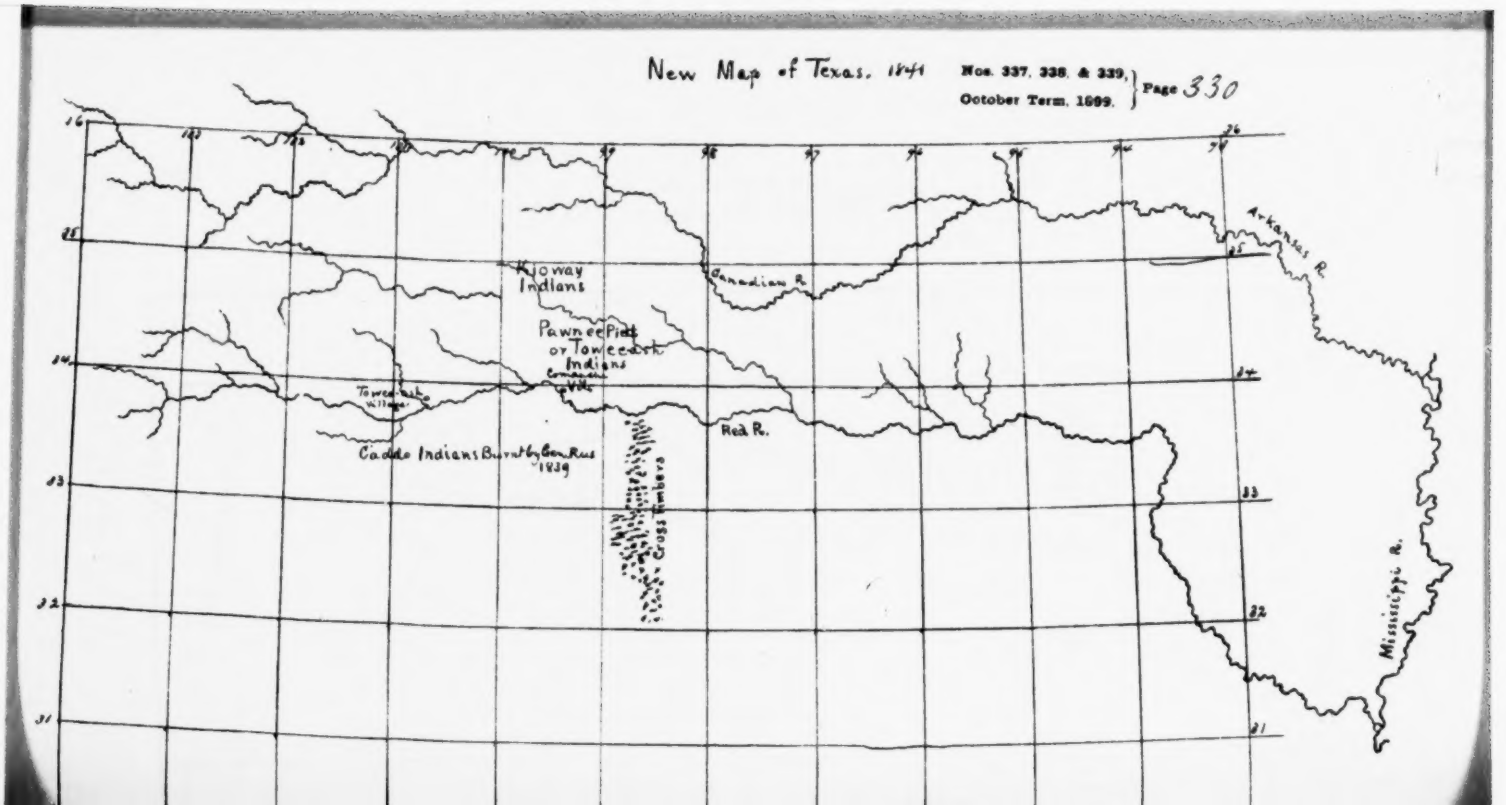
Nos. 337, 338, & 339, October Term, 1899. } Page 324

A 423 F

Melish Map of 1823. Opinion in
United States v. Mexico

Nos 337 338 & 339
October Term. 1899. } Page 327




New Map of Texas. 1841
Kioway Indians
Pawnee Picts or Towee Indians
Towee Village
Towee Village
Caddo Indians Burnt by Gen. Rusk 1839
Red R.
Canadian R.
Arkansas R.
Mississippi R.
Cross Timbers

325 EXHIBIT H. E. P., No. 51.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 51.—Tracing from Melish's map, 1823.

(Filed Jul. 30, 1896. Court of Claims.)

326 The annexed map is an accurate tracing from a map of John Melish, published in 1823, taken from the opinion of the Supreme Court in the case of The United States vs. The State of Texas, decided March 16, 1896. It includes everything shown on said map pertinent to this case. The volume containing this case, when published, will be accessible, for inspection and production in court, to all the attorneys and counsel.

H. E. PAINE.

(Here follows diagram marked p. 327.)

328 EXHIBIT H. E. P., No. 52.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 52.—Tracing from new map of Texas, 1841.

(Filed Jul. 30, 1896. Court of Claims.)

329 The annexed map is an accurate tracing from a map entitled "A New Map of Texas, 1841," attached to volume 3 of the record of the case of The United States v. Texas, No. 4 original, which record and volume are now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. Said tracing includes everything shown in said map pertinent to this cause.

H. E. PAINE.

(Here follows diagram marked p. 330.)

331 EXHIBIT H. E. P., No. 53.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 53.—Tracing from Le Rouge's map, 1778.

(Filed Jul' 30, 1896. Court of Claims.)

332 The annexed map is an accurate tracing from map No. 3, in C. L. Le Rouge's "Atlas Ameriquain Septentrional," published at Paris, France, in 1778, and now in the Library of Congress, accessible for inspection and production in court to all the attorneys and counsel in this cause. Said tracing contains everything shown on said map pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 333.)

334 EXHIBIT H. E. P., No. 54.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.
No. 18932.

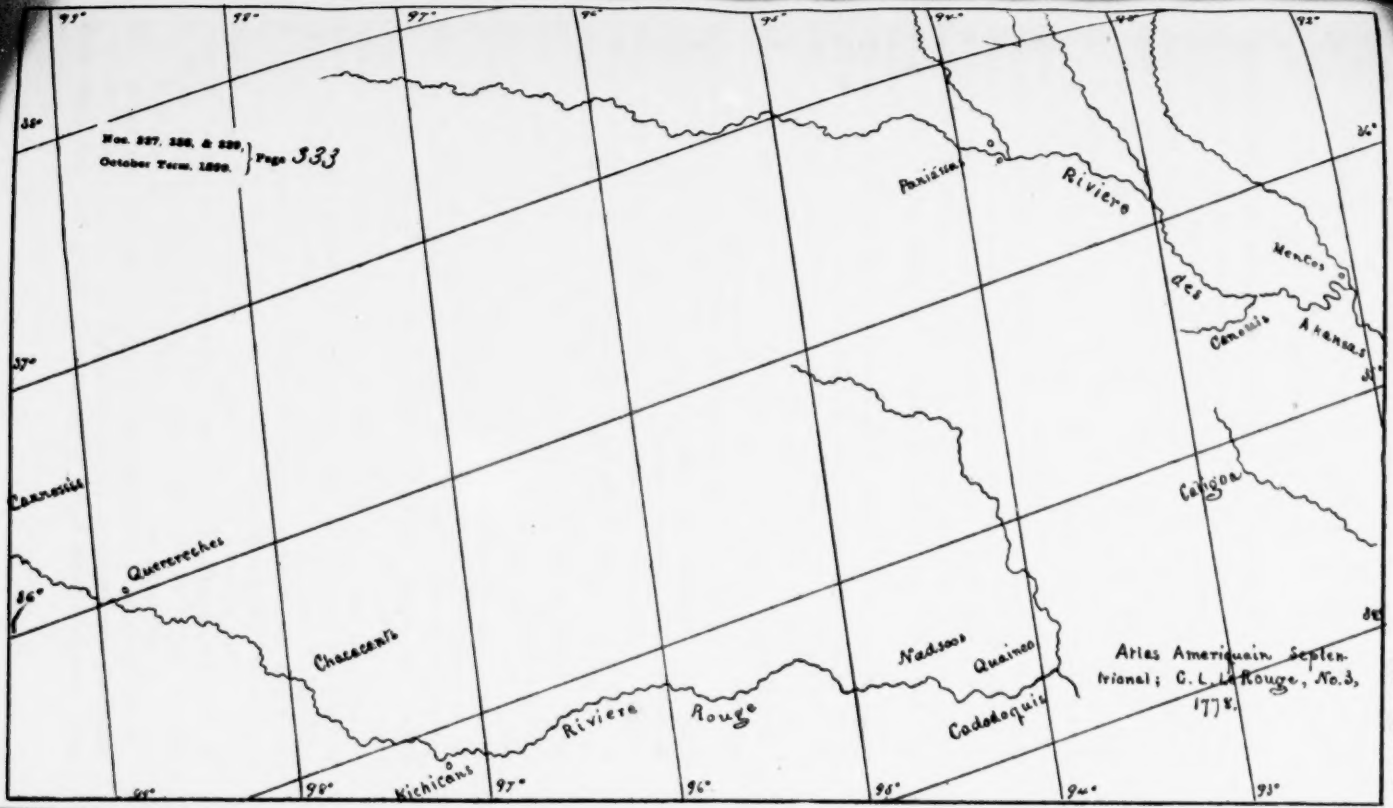
Claimants' evidence in rebuttal, No. 54.—Extract from dictionary of Indian tribes.

(Filed Jul' 30, 1896. Court of Claims.)

335 WASHINGTON, *May 14, 1896.*

The annexed document is an accurate extract from the dictionary of Indian tribes in the Bureau of Ethnology.

H. E. PAINE.


Nos. 327, 328, & 329, October Term, 1890. } Page 333
Parisius
Riviere
des
Canneis
Arkansas
Canneis
Quetreches
Chacacanis
Kichicans
Riviere Rouge
Nadsoos
Quainco
Cadodaquis
Caigoa
Atlas Amerique Septentrional; C. L. La Rouge, No. 3, 1778.

336 [*Dictionary of Indian tribes, Bureau of American Ethnology.*]

CADDOAN.

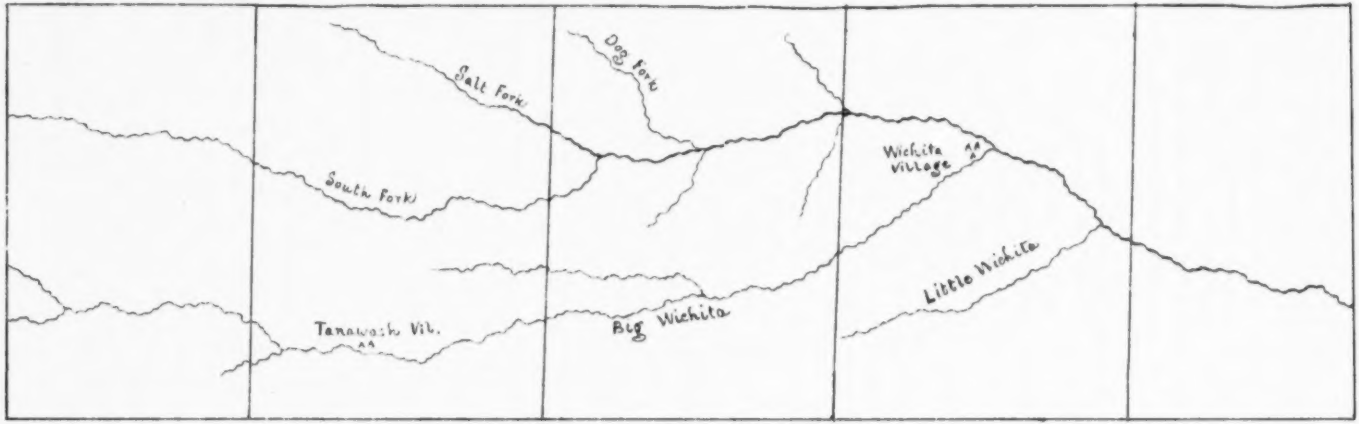
Wichita: One of the tribes of the Caddoan stock. The Wichita, Waco, and Towakarehu speak a language closely related to that spoken by the Pawnee tribes. Gregg said that the Wichita, Waco, and their kindred tribes, on Red R., were chiefly remarkable for their profuse tattooing, whereby they sometimes acquired the title of Pawnee Picts. Catlin and Hildreth identified the Pawnee Picts with the Towiache, and
337 Brackenridge made the Tawakenoe the same as the Towiache. Turner, in Pacific R. R. Rept. III, 68, 1856, regards the Pawnee Picts as the remains of the Towiache. Judging from the name used by Brackenridge, he confounded the Towakarehu, now a Wichita clan, with the whole of the Towiache. Dr. Huffman has discovered that Ta-wai-hash is the real name of the Wichita tribe; hence we may be sure of the identity of the Wichita with the Towiache. In 1809 the Towiache were said to dwell in two villages, Nitcheta, in which the chief lived, and Towaahach.

The latter may have been the original or "real" Towiache (compare real Ponca, real Osage, Sihasapa-hca, etc., of the Siouan stock. In 1891, Dorsey identified the Pancasa, Panoasa, Panconassa, or Panionassa with the Wichita, as Panionassa is the French notation of Pani-wasa,
338 which proves to be the Quapaw for Blackbear (wasa) Pawnee, which, in *in* turn, suggests the Omaha name Pa-cin-wa-sabe, known to be the name by which the Omaha called the Wichita.

Marquette's map (1673) is the first to name the Pancassa. La Salle (1680) 2d Margry, 168, said that the Pana, Pancassa, etc., could be reached by the Missouri R., or by land, and had many horses. Tonti (1690) placed the Onasita village near the Natchitoches and Capiche, 20 leagues inland from the Mississippi R. De l'Isle, in his Carte du Mexique (1703), places the Pani and Panionassa (i. e., Pawnee and Wichita) on two streams entering Arkansas R., on the south. La Hontau (1703) placed the Pancassa on the upper Otentas R., i. e., on the river of the Oto tribe. La Harpe (1719) speaks of the To-a-jas as the most populous nation among those on the S. W. branch of the Arkansas R.
339 At Imaham village, La Harpe met chiefs of the Towakarehu, Adoize, Ouachita, Osita (both were Wichita), Asine, and Tayas (Texas, Ioni?), representing about 4,000 people, the allies of the Pawnee, 40 leagues to the north. Beaurain thought that these nations were the Mento (q. v.). He placed the Panionassa near the river of the Otonys (Oto?). La Harpe also said that the Ouachita village was on Ouachita R. in 1700. According to Le Page, Du Pratz, the Ouachita, fled from the Chickasa prior to 1730. Coxe's map, 1741, places the Ouasita on Natchitock R., SW. of Analac. Bowles' map of America (after 1750) names the Panjasa on the Imaharus R., south of the Osage and NW. of the Mento, and the Paniaisa (as if they were distinct tribes) on the Padoncas R. Jefferys (1761) describes the Ouachita as inter-
340 mixed with the Caddo and as living about 400 leagues up Red R., or 50 leagues above the Natchitochas, having abandoned the Black R. (to which they had given their name) to avoid the Chickasaw, who

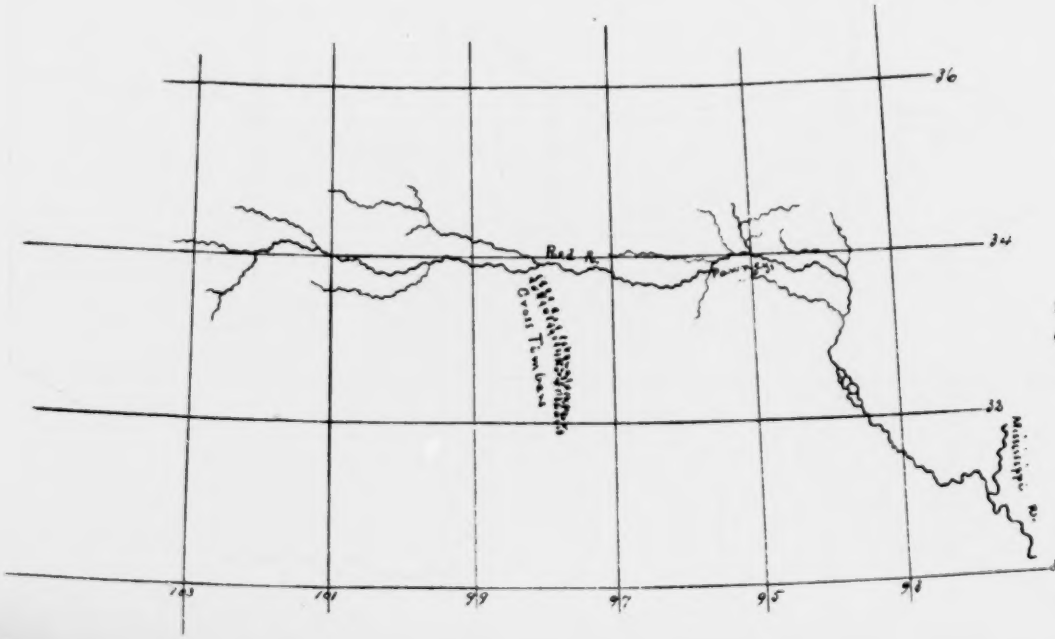
dare not follow them up Red R. Charlevoix (1761) placed the Black Pani on the headwaters of the Arkansas R., but confounded them with the Arikara, who were further north. Jefferys (1763) has two tribes or villages, Paniassa on Arkansas R. and Paniassa on Padoucas R., S. of the Kansez and W. of the Osage. Hutchins (1764), in Schoolcraft (1853), gave the Panis Pigues as distinct from the Panis Blancs by mistake. Perrin du Lac (1805) said that they burnt every white person whom they captured. Bouquet (1764), in Jefferson (1825), located the White Pani south of the Missouri R. Carver (1778) placed the Pani-
341 assa on the Red R. in Arkansas. Alcedo (1788) speaks of the Paniovasa as a village on a small river which flows into the Padoucas R. The Texas State archives (1791–2) distinguished between the Tabayase (Towiache) and Guichitta (Wichita), and in the census of 1790 they speak of the Tahuay as in the jurisdiction of Nacogdaches. According to the same authority (1804), the village of the Tahuayase was on the bank of the Rio Colorado (Red R.). Sibley (1805) gave Pani as their French name, and Towiache as the Spanish and native name. Jefferson (1806) in Bowen (1876) and Fisher (1812) said that the Pawnee Piet were formerly known as White Pawnee. Robin (1807) said that the Ouicita village was on Red R., Texas, opposite that of the Taouayache, the latter being 80 leagues W. of the Grands Cadeaux. According to Lewis, (1809) the Pawnee Piet had no intercourse with the inhabitants
342 of Illinois; they dwelt in a very fertile country and enjoyed a delightful climate. Brackenridge (1815) placed the Ta-wa-ke-nee south of Red R., above the Kä-do-hadalco. He located the Towiache 800 miles above Natchitoches, 340 by land, saying that they had been much reduced by smallpox in 1807 or 1809. Buchanan (1824) distinguished between the white and freckled Pawnee! According to the Soc. Geogr. Mex. (1870) the Tamayacas and Huichites lived in 1828, on the eastern bank of the Brazos R., numbering 58 families. Gallatin (1836) spoke of them as Pani, placing them on the Red R. McCoy (1838) placed the Wichita near the Towiache and Waco. Bonnell (1840) placed the Pawnee Piet on the Red R. Kennedy placed them S. of the False Washita R. now the Washita R., Indian Territory. Sagr (1846) located them on the Kansas Platte and Arkansas rivers (?) He must
343 have included the Pawnee, by mistake. Maillard's map, in his Hist. of Texas gives a village of the Tuckaukanie, betw. two western branches of the Colorado R., betw. 103° and 104° W. of Greenwich and in 32° 30′ N. Lat. The Ind. Rept. for 1849 calls the Towash intruders on the Brazos and Trinity rivers, Texas, with Wichita and Kichai, all of whom it makes of the Wichita tribe. Schoolcraft (1851) called the Towcash a small tribe or part of a tribe in Texas, on the Trinity or Neches R. The Ochivita, according to Soc. Geogr. Mex. (1869), was a hunting tribe in Texas, in the 18th century, being mentioned with the Waco and Towakaseha. Gatschet says that this name was a corruption Huichita. In 1822 (fide Morse) there were 400
344 Towcash on Red R., 1200 miles from its mouth. In 1867, there were 392 Wichita; in 1884 there were 209; in 1885 there were 199; in 1886, 187. All of the Wichita are on the Wichita Reservation, Indian Territory.

11230



State Map of Texas in use until 1858, U.S. v. Texas, p. 292.

11231



H. S. Tanner, 1846,

U.S. v. Texas. Vol. 2, page 30.

345 EXHIBIT H. E. P., No. 55.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 55—Tracing from "State Map" of Texas. Prior to 1858.

(Filed July 30, 1896. Court of Claims.)

346 The annexed map is an accurate tracing from the "State Map" of Texas, contained in the record of the case of The United States v. Texas, No. 4 original, at page 292 of volume 1. Said volume and map are now in the Library of Congress, and are accessible for inspection and production in court, to all the attorneys and counsel in this cause. The annexed tracings include everything shown on said map pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 347.)

348 EXHIBIT H. E. P., No. 56.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 56—Tracing from H. S. Tanner's map, 1846.

(Filed July 30, 1896. Court of Claims.)

349 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from H. S. Tanner's map of 1846, contained in the record of the case of The United States v. Texas, volume 3, page 40, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 350.)

351 EXHIBIT H. E. P., No. 57.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 57.—Tracing from R. Creutzbar's map, 1848.

(Filed July 30, 1896. Court of Claims.)

351½ WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from R. Creutzbar's map of 1848, contained in the record of the case of The United States v. The State of Texas, volume , page 292, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 352.)

353 EXHIBIT H. E. P., No. 58.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 58.—Tracing from Cordova map, 1848.

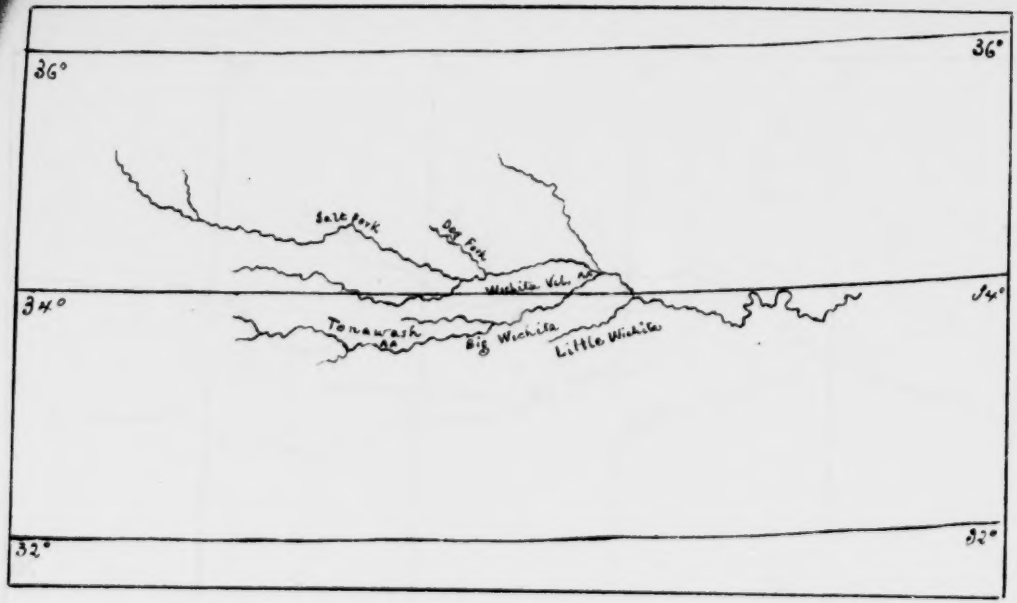
(Filed July 30, 1896. Court of Claims.)

354 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from De Cordova's map, contained in volume 1 of the record of the case of the United States v. The State of Texas, at page 292.

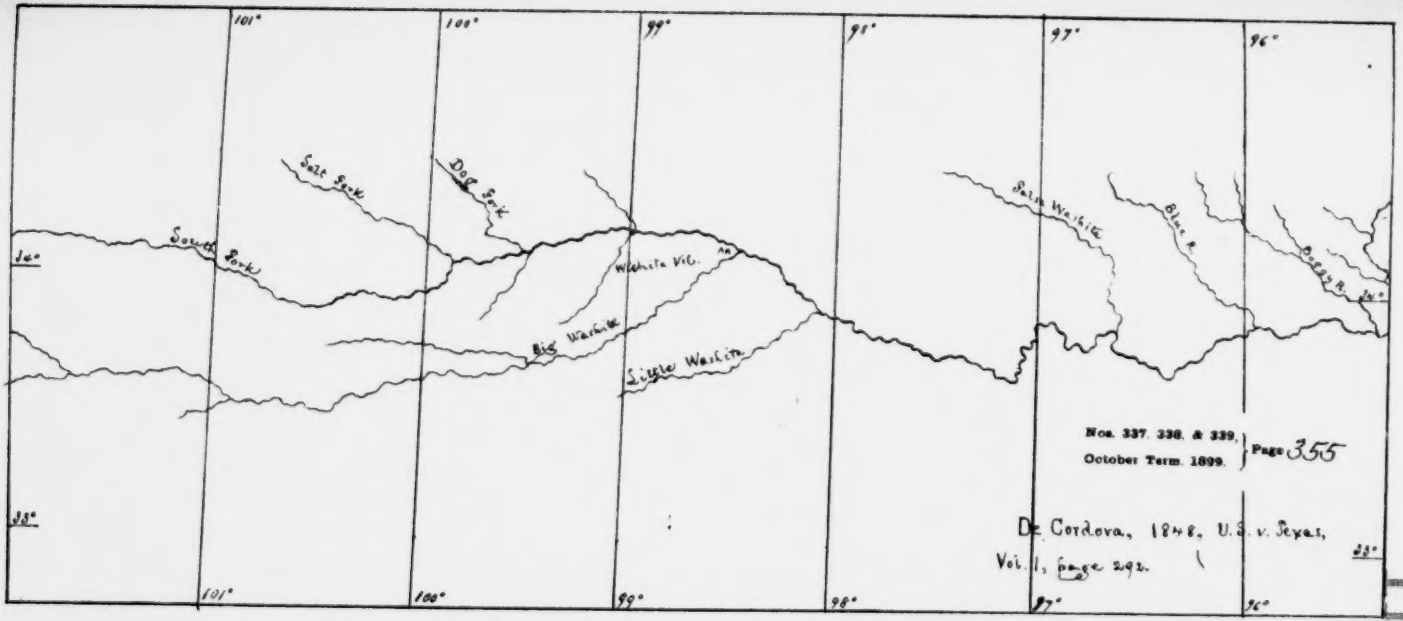
H. E. PAINE.

(Here follows diagram marked p. 355.)

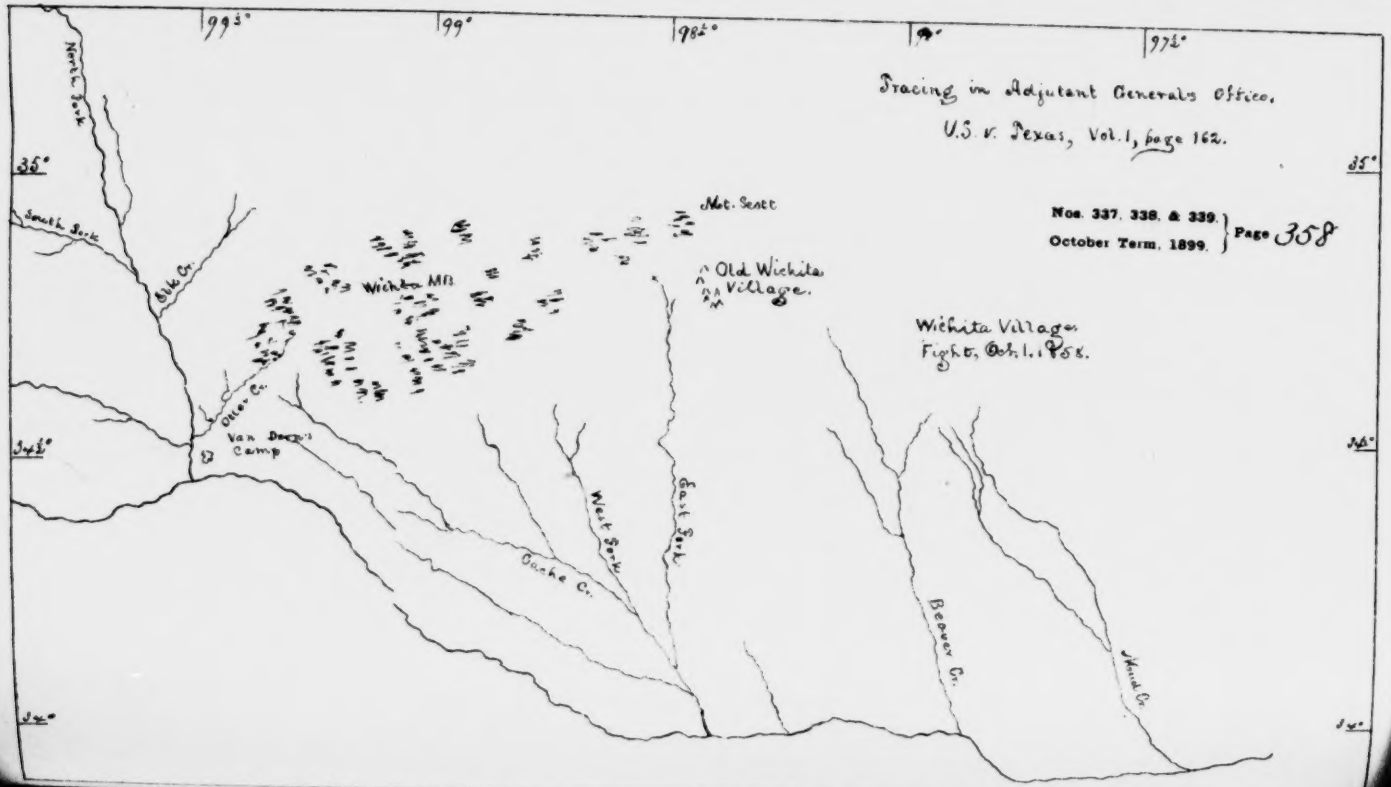


Nos. 337, 338, & 339.
October Term, 1899.
} Page 352

R. Creuzbaur, 1948, U.S. v. Texas, p. 282


101°
100°
99°
98°
97°
96°
14°
38°
Salt Fork
Dog Fork
South Fork
Wichita Riv.
Big Wichita
Little Wichita
Salt Wichita
Blue R.
Brazos R.
Nos. 337, 338, & 339,
October Term, 1899.
Page 355
De Cordova, 1848, U.S. v. Texas,
Vol. 1, page 292.

11234


99½°
99°
98½°
98°
97½°
Tracing in Adjutant Generals Office.
U.S. v. Texas, Vol. 1, page 162.
Nos. 337, 338, & 339.
October Term, 1899.
Page 358
North Fork
South Fork
Elk Cr.
Wichita Mts.
Mt. Scott
Old Wichita Village.
Wichita Village Fight, Oct. 1, 1858.
Otter Cr.
Van Doren's Camp
West Fork
Cache Cr.
Beaver Cr.
Wild Cr.
36°
35°
34½°
34°

356 EXHIBIT H. E. P., No. 59.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants.
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 59.—Tracing from map in Adjutant-General's Office, 1859.

(Filed Jul. 30, 1896. Court of Claims.)

357 The annexed map is a tracing from a tracing in the Adjutant-General's Office, contained in the record of the case of The United States v. Texas, No. 4, original, at page 162 of volume 1. Said volume and tracing are now in the Library of Congress and are accessible for inspection and production in court to all the attorneys and counsel in this cause. The annexed map includes everything shown on said tracing pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 358.)

359 EXHIBIT H. E. P., No. 60.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 60.—Tracing from W. Darby's map.

(Filed Jul. 30, 1896. Court of Claims.)

360 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from W. Darby's map, contained in the record of the case of The United States v. The State of Texas, volume 3, page 30.

H. E. PAINE.

(Here follows diagram marked p. 361.)

362 EXHIBIT H. E. P. No., 61.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 61.—Tracing from Maj. Merrill's map, after 1855.

(Filed Jul. 30, 1896. Court of Claims.)

363 WASHINGTON, *May 14, 1896.*

The annexed map is an accurate tracing from Maj. H. W. Merrill's map, contained in the record of the case of the United States v. The State of Texas, at page 172, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 364.)

365 EXHIBIT H. E. P., No. 62.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 62.—Tracing from P. Vandermaelen's map.

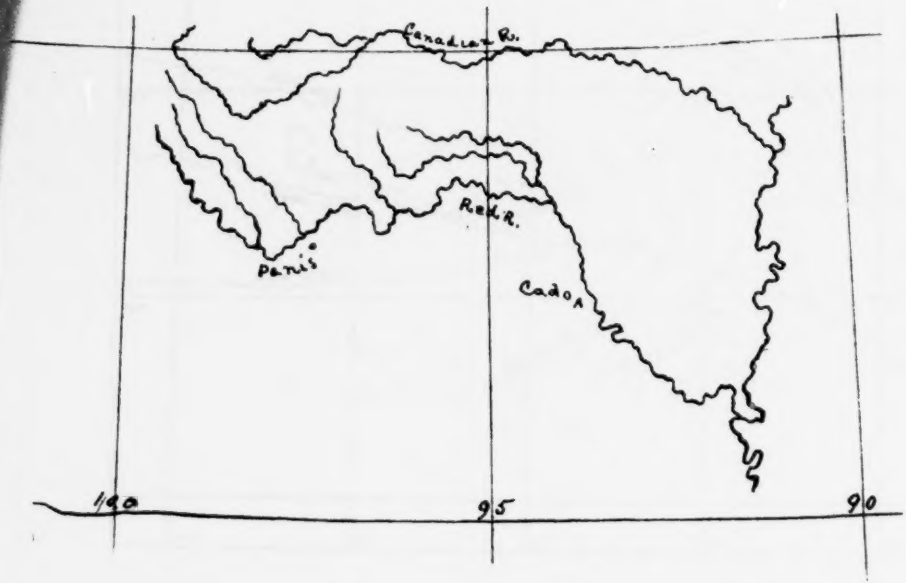
(Filed Jul. 30, 1896. Court of Claims.)

366 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from a map contained in the fourth part of an atlas, purporting to have been published in Bruxelles, in 1827, entitled "Atlas Universal de Geographie," now in the Library of Congress.

H. E. PAINE.

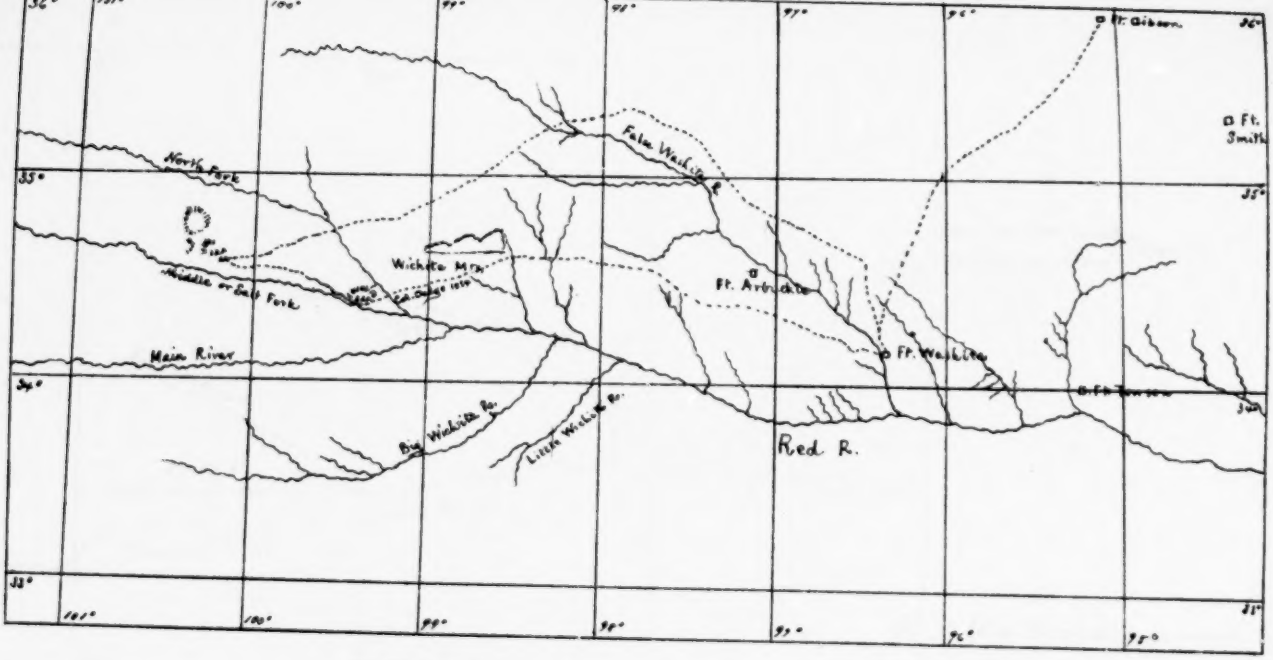
(Here follows diagram marked p. 367.)



Nos. 337, 338, & 339,
October Term, 1899. } Page 361

W. Darby, U.S.v. Texas, Vol. 3, p. 30.

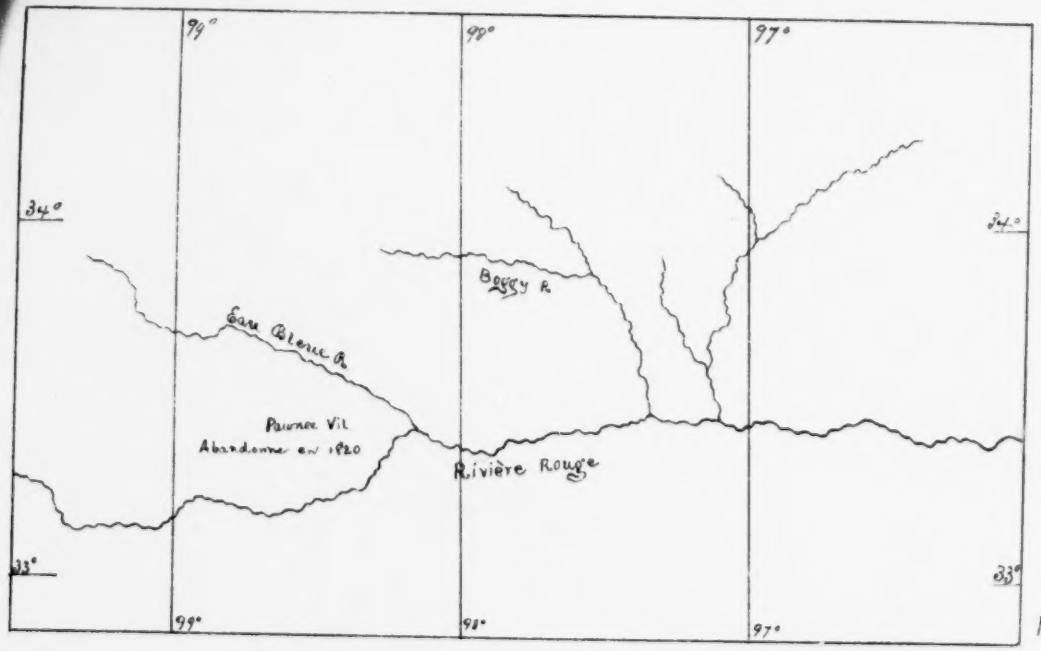
1235



Nos. 327, 328, & 329,
October Term, 1899. } Page 364

Maj. H.W. Merrill.
U.S. v. Texas, Vol. I, page 172.

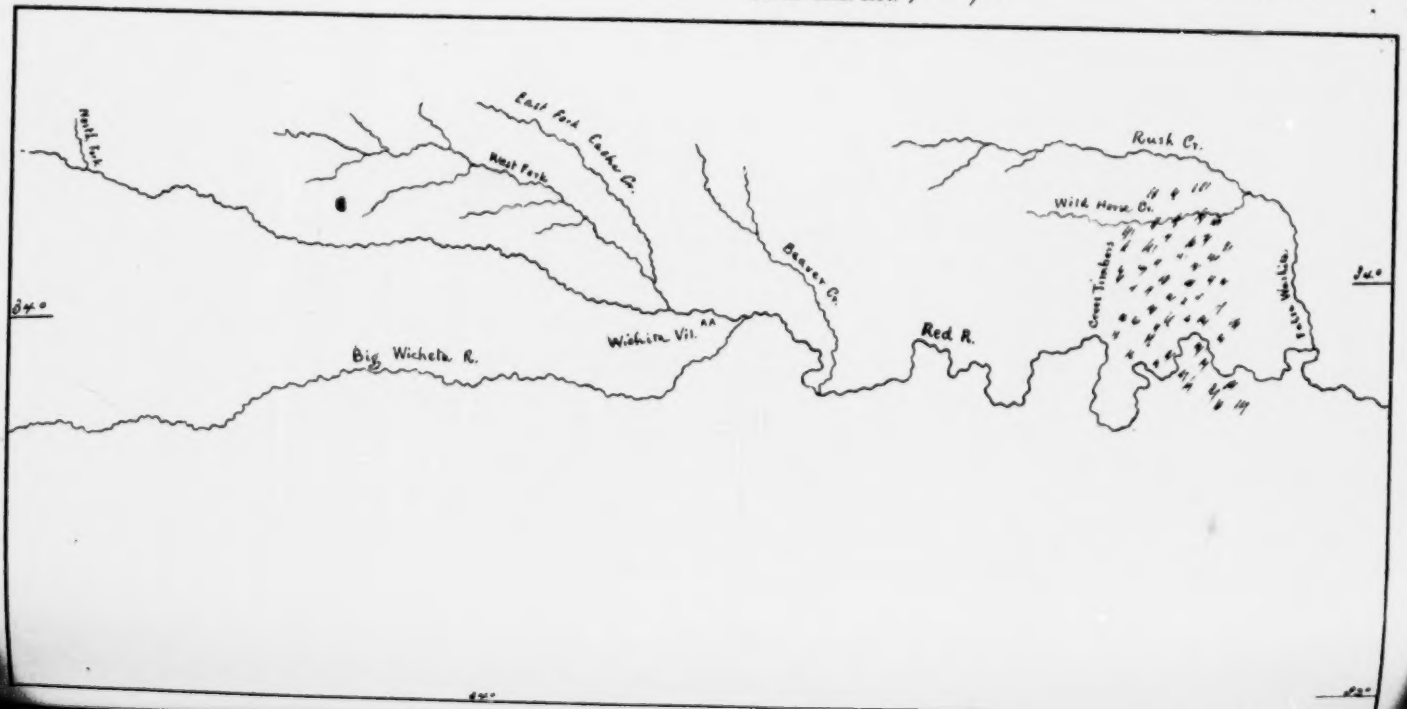
11238



Atlas Universal de Geographie Dressé par Ph. Vandermaelen, Quatrième Partie, No 53, Bruxelles, 1827.

11239

R. Creutzbar;
New York, 1886.
(Detatched.)



368 EXHIBIT H. E. P., No. 63.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 63.—Tracing from Creutzbar's map, 1856.

(Filed Jul. 30, 1896. Court of Claims.)

369 WASHINGTON, *May 13, 1896.*

The annexed map is an accurate tracing from R. Creutzbar's map, published in New York in 1856, now in the Library of Congress.

H. E. PAINE.

(Here follows diagram marked p. 370.)

371 EXHIBIT H. E. P., No. 64.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 64.—Extracts from Brackenridge's work.

(Filed Jul. 30, 1896. Court of Claims.)

372 The annexed typewritten document is an accurate extract from Brackenridge's work, published in 1817. Said book is now in the Library of Congress and is accessible, for inspection and production in court on the trial, to all the attorneys and counsel in this cause.

H. E. PAINE.

373 Brackenridge's work, 1817, contains the following statements:

"Keyeshees: 60 warriors, 200 souls, east branch of the Trinity River." (Page 150.)

"Tachees: 80 warriors, 250 souls, on a branch of the Sabine." (Page 150.)

"Caddoqués: Thirty-five miles west of the main branch of Red River, 120 miles by land above Natchitoches; formerly lived 375 miles higher up." (Page 158.)

"Tachees: On a branch of the Sabine; language, Caddo; gave their name to the province of Texas." (Page 159.)

"Pani, or Towiache: Eight hundred miles above Natchitoches, 340 by land." (Page 160.)

374 EXHIBIT H. E. P., No. 65.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 65.—Tracing from Mitchell's Atlas, 1776.

(Filed Jul. 30, 1896. Court of Claims.)

375 The annexed map is an accurate tracing from Mitchell's "Amerique Septentionale," published in London, England, in 1776, and now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. Said tracing includes everything shown on said map pertinent to this case.

H. E. PAINE.

(Here follows diagram marked p. 376.)

377 EXHIBIT H. E. P., No. 66.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

Claimants' evidence in rebuttal, No. 66.—Extracts from Moore's Description of Texas, 1844.

(Filed Jul. 30, 1896. Court of Claims.)

378 The annexed typewritten documents are accurate extracts from pages 30 and 32 of the second edition of a "Description of Texas," &c., by Francis Moore, jr., published in New York, in 1844, now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause.

H. E. PAINE.

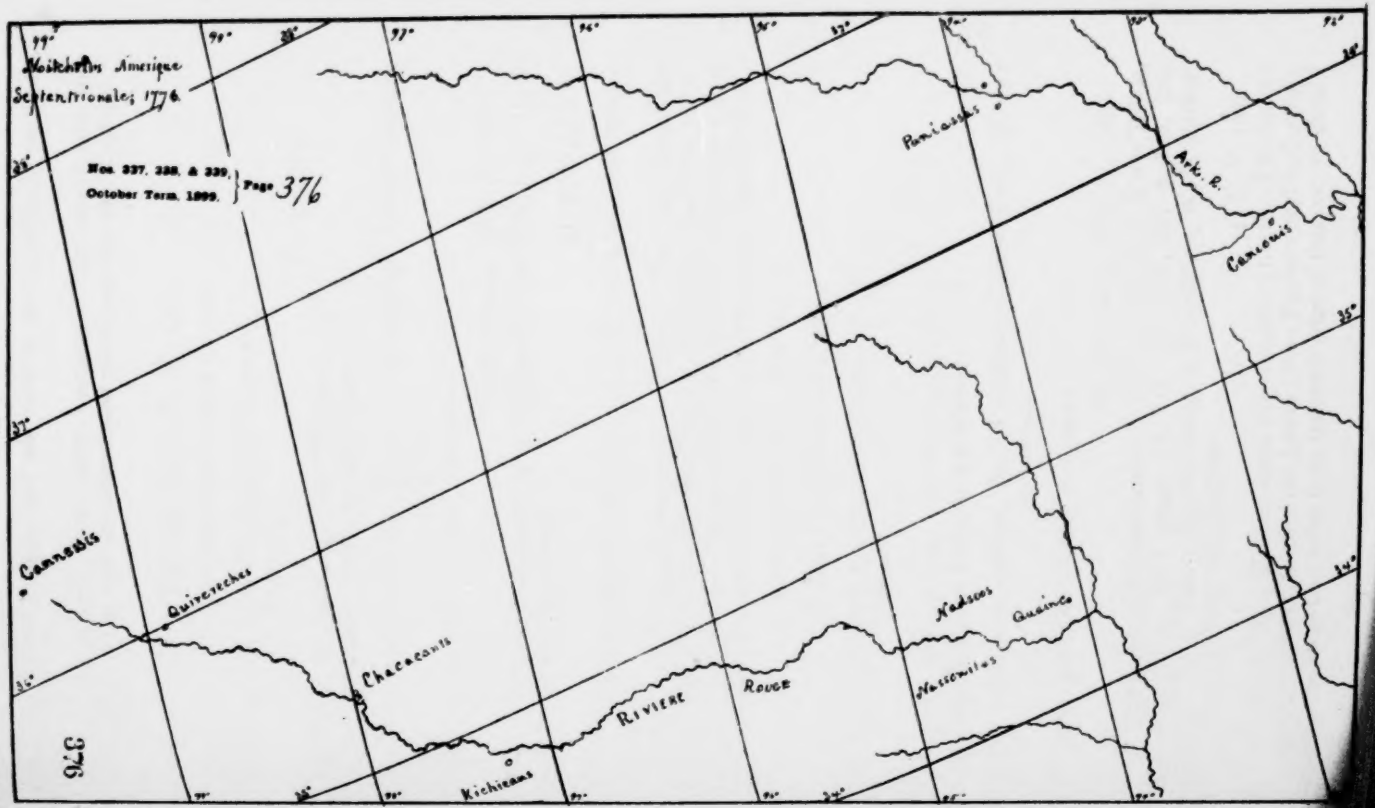
379 [Description of Texas, by Francis Moore, jr., New York, 1844. Second edition.]

"The principal tribes now residing within the limits of Texas are the Commanches, the Lipans, the Tonkewas, the Carancuawas, the Towaccanies, the Towcash, the Keachies, the Ienies, the Coshattus, the Alabamas, and Bedais, and a few roving Cherokees, Kickapoos, Caddos, and Shawnees from the United States." (Page 30.)

"The Towaccanies and Towcash resemble each other and are often found associated in the same villages. They number about two hundred and fifty warriors. They live high up on the Colorado, above the San Saba.

"The Keachies number about fifty warriors. They formerly inhabited the forests near the sources of the Trinity, but have been driven into the

1242


Nos. 337, 338, & 339, October Term, 1899.
Page 376
Conneaus
Quiveracches
Chacacanis
Rivière Rouge
Kichiesans
Pawnees
Ark. R.
Cameanis
Quainco
Nassonites
376

prairies west of that stream, and are now in an exceedingly destitute condition.

"The Ienies number about forty warriors. They reside near the sources of the Trinity, and are often found associated with the Keachies." (Page 32.)

380 EXHIBIT H. E. P., No. 67.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal No. 67.—Extract from Martin's History of Louisiana.

(Filed Jul. 30, 1896. Court of Claims.)

381 WASHINGTON, *May 14, 1896.*

The annexed document is an accurate extract from page 102 of Martin's History of Louisiana.

H. E. PAINE.

382 In Martin's History of Louisiana, page 102, it is stated that, in 1669—

"Bienville and St. Denys returned to Biloxi. They had found the country through which they intended to pass entirely covered with water, and had proceeded to the village of the Wachitas, in which they found but five huts, the Indians having mostly removed to the Natchitoches."

383 EXHIBIT H. E. P., No. 68.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 68.—Extracts from Notes, Marcy's Expedition.

(Filed Jul. 30, 1896. Court of Claims.)

384 WASHINGTON, *May 14, 1896.*

The annexed documents are accurate extracts from Notes Taken, Marcy's Expedition, 1854, pages 79, 212, 213, 221, 227–8, 228, 214, contained in Notes Taken During Marcy's Expedition, W. B. Parker, Phila., 1856, in Library of Congress.

H. E. PAINE.

385 "These Cross Timbers are a very singular growth. The one we had now entered is called the Lower Cross Timbers, and is about six miles wide; then eighteen miles from the outer edge of this one we should

enter the Upper, and larger. They extend almost due north and south from the Canadian to the Brazos. The timber is a short, stunted oak not growing in a continuous forest, but interspersed with open glades plateaus, and vistas of prairie scenery, which give a very picturesque and pleasing variety." (Notes Taken, Marcy's Expedition, 1854, page 79.)

"September 4th to 10th (1854). The surveying parties having concluded their labors, we struck tents this morning and marched to Fort Belknap, where we camped for a short time to procure stores and prepare for future work in locating and surveying lands for the Caddos, Ionies, Ah-nan-da-kas, To-wac-ko-nies, Wichitas, and Ton-kah-was, who exist in this neighborhood." (Id., page 212.)

"We arrived at Fort Belknap on the seventh (Sept., 1854). At a council held here the Ionies and Ah-nan-dah-kas were represented by Jose Maria, the Caddos by Ti-nah, the Wichitas and Wacos by O-che-ash and Ack-a-quash, and the To-wac-ko-nies by Utsiocks." (Id., page 213.)

"The Indians who subsist in the vast regions of the far Southwest are the Comanches, Wacos, Caddos, Ionies, Ah-nan-dah-kas, To-wac-co-nies, Ton-kah-ways, Paluxsies, Moscalara, Apaches, Lipans, Kechies, Wichitas, Kickapoos, Quapaws, Kioways, and Navajoes, all nomadic, and the Creeks, Seminoles, Choctaws, Chickasaws, Shawnees, and Delawares, who live in permanent houses." (Id., page 221.)

386 "The Caddos, Ionies, and Ah-nan-dah-kas numbered about seven hundred and fifty—warriors, women, and children—speak the same language, and intermarry. They have a tradition that they issued from the Hot Springs of Arkansas, and from that went to Red River, near Natchitoches, and finally to the Brazos." (Id., page 227-8.)

"As far as could be ascertained there are eighty Witchita men, one hundred and twelve women, and one hundred and twenty-two children. They are most arrant horse thieves and scoundrels, and have given more trouble to the settlers in Texas than any other tribe.

"They have a village up on Rush Creek, a tributuary to the Washita, a kind of rendezvous for them, from which they make constant marauding expeditions." (Id., page 228.)

"Fort Belknap, one of the most distant posts on this frontier, is situated about a mile from the Brazos." (Id., page 214.)

387 EXHIBIT H. E. P., No. 138.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

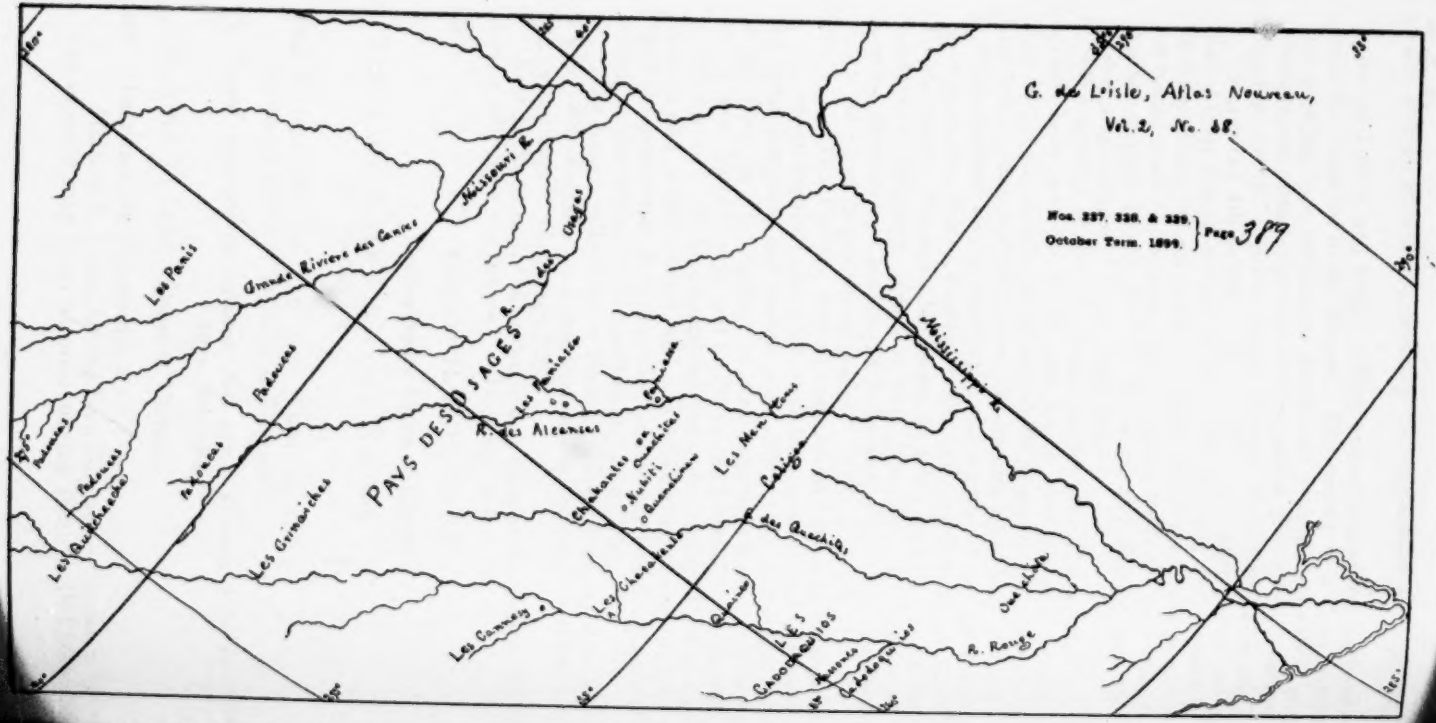
Claimants' evidence in rebuttal, No. 138.—Tracing from De l'Isle's Atlas Nouveau.

(Filed Jul. 30, 1896. Court of Claims.)

388 DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine, having been duly sworn, deposes as follows: The annexed map is an accurate tracing from G. De l'Isle's "Atlas

11244


G. de Lisle, Atlas Nouveau,
Vol. 2, No. 88.
Nos. 327, 328, & 329.
October Term, 1899.
Page 389
PAYS DES SIOUX
Les Panis
Grande Rivière des Canses
Missouri R.
Les Padoucas
Les Panioüa
R. des Arcansas
Les Arcansas
Les Quichesabes
Les Grimarches
Les Chaouanons
Les Canneng
Les Chaouanons
Les Mentous
Caddoquious
R. Rouge
Mississippi R.

Nouveau," volume 2, No. 38. Said atlas is now in the Library of Congress, accessible, for inspection and production in court, to all the attorneys and counsel in this cause. Said tracing includes everything shown on said map pertinent to this case.

H. E. PAINE.

Subscribed and sworn to before me this day of , 1896.

(Here follows diagram marked p. 389.)

390 EXHIBIT H. E. P., No. 149.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 149.—Extract from Johnson's Universal Cyclopedia.

(Filed Jul. 30, 1896. Court of Claims.)

391 WASHINGTON, *May 14, 1896.*

The annexed document is an accurate extract from Johnson's Universal Cyclopedia, in the Bureau of Ethnology.

H. E. PAINE.

392 [Extracts from Johnson's Universal Cyclopedia.]

On pages 868, 869, appears an article entitled "Caddoan Indians," written by Mr. S. O. Dorsey, of the Bureau of Ethnology, after the preparation of the Seventh Annual Report of that Bureau. It contains the following paragraphs:

"Southern group: This includes the Caddo, Wichita, Kichai, and other tribes and villages which were formerly in Texas, Louisiana, Arkansas, and Indian Territory. The Caddo and Kichai have undoubtedly been removed from their priscan habitats, but the Wichita, judging from the survival of local names and the statement of La Harpe in 1719,
393 are now in or near one of their early abodes. Sibley locates the Caddo habitat 35 miles W. of the main branch of Red River, being 120 miles by land from Natchitoches; and they formerly lived 375 miles higher up. The Wichita probably migrated from northwestern Louisiana and southwestern Arkansas to the Indian Territory. * * * After comparing the recorded statements about the several tribes, it would appear that the original habitat of the southern group of the Caddoan Indians was a section of country now embracing northeastern and part of eastern Texas and adjacent territory in Arkansas and Louisiana, its boundaries being the Red, the Sabine, and the Brazos rivers."

394 EXHIBIT H. E. P., No. 152.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal No. 152.—Extract from Gregg's Narrative, 1839.

(Filed July 30, 1896. Court of Claims.)

395 WASHINGTON, D. C., *July 15, 1896.*

The annexed document is an accurate extract from pages 17, 18, 179, 180, 199, 200 of Gregg's "Commerce of the Prairies."

H. E. PAINE.

396 *Josiah Gregg's expedition of 1839.*

[Pages 17, 18, 179, 180, 199, 200.]

We had just reached the extreme edge of the far-famed "Cross Timbers," when we were gratified by the arrival of forty dragoons under the command Lieut. Bowman, who had orders to accompany us to the supposed boundary of the United States. On the same evening we had the pleasure of encamping together at a place known as Camp Holmes, a wild, romantic spot in latitude 35° 5′, and but a mile north of the Canadian River. Just at hand there was a beautiful spring, where, in 1835, Colonel Mason, with a force of United States troops, had a "big talk" and still bigger "smoke" with a party of Comanche and Wichita Indians. * *

This vast territory is not interrupted by any important moun-
397 tainous elevations, except along the borders of the great western Sierras, and by some low craggy ridges about the Arkansas frontier—skirts of the Ozark Mountains. There is, it is true, high on the dividing ridge between the Red River and the False Washita, a range of hills, the southwestern portion of which extends about to the 100th degree of longitude west from Greenwich—that is, to the United States boundary line. These are generally called the Witchita Mountains, but sometimes Towyash, by hunters, perhaps from toyavist, the Comanche word for mountain. I inquired once of a Comanche Indian how his nation designated this range of mountains, which was then in sight of us. He answered "Toyavist." "But this simply means a mountain," I replied. "How do you distinguish this from any other mountain?"

"There are no other mountains in the Comanche territory,"
398 he rejoined, "none till we go east to your country, or south to Texas, or west to the land of the Mexican." * * *

The celebrated Cross Timbers, of which frequent mention has been made, extend from the Brazos, or perhaps from the Colorado, of Texas,

across the sources of Trinity, traversing Red River above the False Washita, and thence west of north to the Red Fork of Arkansas, if not further. * * * They may be considered as the "fringe" of the great prairie, being a continuous brushy strip composed of various kinds of undergrowth, such as blackjacks, post oaks, and in some places hickory, elm, etc., intermixed with a very diminutive dwarf oak, called by the hunters, "shin oak." * * * The underwood is so matted in many places with grapevines, green briars, etc., as to form almost impenetrable "roughs," which serve as hiding places for wild beasts as well as
399 wild Indians and would, in savage warfare, prove almost as formidable as the hammocks of Florida.

400 EXHIBIT H. E. P., No. 153.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.
No. 18932.

Claimants' evidence in rebuttal No. 153.—Extract from "The Pawnee Indian," by Dunbar.

(Filed July 30, 1896. Court of Claims.)

401 WASHINGTON, D. C., *July 15, 1896.*

The annexed document is an accurate extract from paragraph 8 of "The Pawnee Indians, Their History and Ethnology," now in the Bureau of Ethnology.

H. E. PAINE.

402 *The Pawnee Indian. By John H. Dunbar. Library of Bureau of Ethnology.*

The Pawnee Indians; Their History and Ethnology. Paragraph 8, B. of Eth.:

"The traditions of three of the bands, the Xaú-i, Kit-kĕ-hak-ĭ, and Pĕt-a-haú-ĕ-rat coincide in stating that the Pawnees migrated to the Platte River region from the south and secured possession of it by conquest. * * * The Wichitas, I am told, have a tradition that the primitive home of themselves and the Pawnees was upon the Red River below the mouth of the Wichita. This would place them in close proximity with the Caddos (c. f., p. 1). The Wichitas also attempt to explain their own southern position by alleging that, having had reason to be dissatisfied with the migration or its results, they attempted to return to their
403 old home. The Pawnees also state that the Wichitas accompanied them on the migration, but wandered away to the south, though silent as to the reason. This much may be safely claimed, that the separation must have occurred long since, as is indicated by the marked divergence of the Wichita dialect."

404 EXHIBIT H. E. P., No. 154.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 154.—Extract from Journal of M. de Bienville's Voyage, 1700.

(Filed Jul' 30, 1896. Court of Claims.)

405 WASHINGTON, *July 15, 1896.*

The annexed document embraces accurate extracts from a copy of the journal of the voyage of M. de Bienville, from the Taensas to the village of the Yatachés (March 22–May 18, 1700), printed in the fourth volume of Margry, at pages 432, 434. The annexed English translation of said document is also accurate.

H. E. PAINE.

406 [Copie du Journal du Voyage de M. de Bienville, des Taensas au village des Yatachés par les terres (22 mars–18 mai 1700).] 4 Margry, 432, 434.

Le 22 de mars (1700) je suis party du village sur les neuf heures du matin, avec vingt-deux Canadiens, six Taensas et un Ouachita. Je marchay tout le jour, dans un pays noyé, dans l'eau jusqu'à moitié jambes et aux genoux. Sur le soir, je me suis rendu sur le bord d'une petite rivière de soixante-dix pas de large et fort profonde, distant des Taensas de quatre lieues et demie à l'ouest. Ie trouvay là les Ouachitas avec plusieurs canots en partie chargés de sel. Ils sont venu de chez eux par de petites rivières, practicable dans les eaux hautes.

Le 28, dimanche, j'arrivay au village des Ouachitas. Après
407 avoir fait deux lieues et demie au ouest, nous avons passé à la nage un marais de cinq cents pas de large, et traversé plusieurs prairies séparées les unes des autres par des lisières de bois meslées de pins, fresnes, ormes, cèdres. Ie me suis rendu au village des Ouachitas. Ce village est sur le bord de la rivière Marne ou Sablonière, ou plustost une branche de cette rivière.

408 [Copy of the journal of M. de Bienville's voyage by land from the Taensas to the village of the Yatachés (March 22–May 18, 1700).]

March 22.

March 22, at nine o'clock a. m., I left the village with twenty-two Canadians, six Taensas, and one Ouachita. I travelled all day through an overflowed country, in water half-leg deep and up to the knees. In the evening I arrived upon the bank of a small river, seventy paces in width and very deep, distant westwardly from the Taensas four and one-half leagues. I found there the Ouachitas with several canoes partly laden with salt. They came from home by small streams, practicable in high water.

On the 28th, Sunday, I arrived at the village of the Ouachitas. After having made two leagues and a half in a westerly direction we
409 swam across a marsh five hundred paces wide and traversed sev-

eral prairies separated from each other by borders of woods of mixed pines, ashes, elms, cedars. I arrived at the village of the Ouachitas. This village is on the bank of the river Marne or Sablonière, or rather a branch of that river.

410 EXHIBIT H. E. P., No. 156.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 156.—Extract from deposition of Ta-wa-ko-nee Jim.

(Filed Jul' 30, 1896. Court of Claims.)

411 WASHINGTON, D. C., *July 15, 1896.*

The annexed document is an accurate extract from the deposition of Ta-wako-nee Jim, printed at page 634 of the record of the case of The United States *v.* Texas, now in the Library of Congress.

H. E. PAINE.

412 [Extract from deposition of Tawakonee Jim. Record, United States *v.* Texas, page 634.]

"2d. Q. How old were you when you first came into this territory?

"Ans. (Direct, without interpreter.) I was born at Towakonee Hills, in Texas, and I came here to Fort Sill when I was about ten years old. The Wichita used to live right there at the foot of the hills. I belonged to the Ta-wako-nees. Ta-wako-nees are all the same tribe as the Wichitas."

Taken in 1894; 51 years old; born in 1843.

413 EXHIBIT H. E. P., No. 157.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, *v.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 157.—Extract from deposition of H. P. Jones.

(Filed Jul' 30, 1896. Court of Claims.)

414 WASHINGTON, D. C., *July 15, 1896.*

The annexed document is an accurate extract from the deposition of H. P. Jones, taken from pages 495 and 497 of the record of the case of the United States *v.* The State of Texas, now in the Library of Congress.

H. E. PAINE.

415 [Extract from deposition of H. P. Jones. Record, United States v. Texas, pages 495, 497.]

"6. Q. Do you know the location of Camp Radzyminski? If so please describe it, with reference to its distance from the mouth of Otter Creek and its proximity to the mountains.

"A. Yes. It is on the west side of Otter Creek, right in a basin of the mountain. Otter Creek flows right along part it on the east and I should judge that Radzyminski was about fifteen or sixteen miles from the mouth of Otter Creek where it empties into the North Fork of Red River.

"7. Q. What is the nearest point on the North Fork to Camp Radzyminski?

"A. I think that there is one place that is not over six or
416 seven miles from Radzyminski, where it makes a bend to the east. * * *

"28. Q. How far from this place (Ft. Sill) is the eastern end of the Wichita range of mountains?

"A. About a mile and a half, I reckon."

417 [Extract from deposition of Charles Goodnight. Record, United States v. Texas, page 401.]

"59. Question. When you first became acquainted with the North Fork of Red River and the country adjacent thereto, were there any evidences of old villages in that region, Indian or otherwise?

"Answer. There is evidence of the Comanche Indians in that country, but they are not in the habit of settling or living long at a place, except Palo Duro Canyon, over here. That is the oldest I have ever seen where they wintered there many, many years.

418 [Deposition of J. J. Sturm, taken March 23, 1894. Record, United States v. Texas, pages 602, 603.]

"The Caddo Indians, ever since I have known them, have been an agricultural people, and the Wichitas the same. They have a small, early corn, that is called Indian corn. When the corn is in roasting-ears state they roast it by the fire—I mean the Caddos—and after it gets dry they sack it up for winter use. * * * When I first came among the Wichitas they would expose the corn, after it was gathered, to the sun until it was thoroughly dry—put it on a scaffold. After that they would sack it up in little rawhide sacks, &c. * * * When I first came among them—that was on the Brazos River, twenty miles below Belknap—they had all been furnished plows by the Government,
419 and the larger fields the men plowed."

420 EXHIBIT, H. E. P., No. 158.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.
No. 18932.

Claimants' evidence in rebuttal, No. 158.—Extract from deposition of Che wah stalk.

(Filed Jul. 30, 1896. Court of Claims.)

420½ WASHINGTON, D. C., *July 15, 1896.*

The annexed document embraces accurate extracts from the deposition of Che wah stalk, taken from pages 645, 646 of the record of the case of The United States v. The State of Texas, now in the Library of Congress.

H. E. PAINE.

421 [Extract from the deposition of Che wah stalk, a Wichita Indian. Record, United States v. Texas, pages 645, 646.]

"Ans. I don't know how old I am. I don't live very far from here. I live on a creek called Osh ke kaw, which means, or what the English call, Sugar Creek.

"2d Q. Do you remember when the stars fell?

"Ans. Yes.

"3d Q. How big was you then?

"Ans. About eight or nine years old. I was about four foot high. * * *

"Cross-examined:

"1st Q. Where was you born—what country?

"Ans. I was born southeast of here.

"2d Question. Were you born in Texas?

422 "Answer. I was born on the other side of Kitchikaw River, down on the Brazos River, way below Waco. * * *

"31st Q. Did your people go by the name of Pawnee picks when you were a young man?

"Ans. I don't know anything about that.

"32d Q. Did they call them Toy way ihosh?

"Ans. Yes; I was young when I knew that name—Toy way ihosh.

"33d Q. Did anybody ever call your people Pannis?

"Ans. I don't know anything about that."

423 EXHIBIT, H. E. P., No. 159.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 159.—Extract from deposition of A. J. Mears.

(Filed Jul. 30, 1896. Court of Claims.)

424 WASHINGTON, D. C., *July 15, 1896.*

The annexed document is an accurate extract from the deposition of A. J. Mears, taken from page 191 of the record of the case of The United States v. The State of Texas, now in the Library of Congress.

H. E. PAINE.

425 [Extract from deposition of A. J. Meers. Record, United States v. Texas, page 191.]

"Question. What proportion of the Wichita range of mountains is south of North Fork and what proportion north thereof?

"Answer. South and west there is about one-seventh, and almost due east, in the Territory, is about six-sevenths."

426 EXHIBIT, H. E. P., No. 160.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 160.—Extract from deposition of James Mooney.

(Filed Jul. 30, 1896. Court of Claims.)

427 WASHINGTON, D. C., *July 15, 1896.*

The annexed document embraces extracts from the deposition of James Mooney, taken from pages 318 and 675 of the record of the case of The United States v. The State of Texas, now in the Library of Congress.

H. E. PAINE.

427¼ [Extract from the deposition of James Mooney. Record, United States *v.* Texas, pages 318, 675.]

"20 Q. Can you give me any of the names by which the tribes now known as the Wichitas and Wacos were formerly known?

"A. For the Wichitas, yes; they are as follows:

"Their proper names, Kiti Kitish, Tow cash; old French name, Pani Piqué; old English name, Pawnees of the South; common name (perhaps of Osage origin) Wichita.

"I obtained the Wichita proper names from personal investigation. I may add that, in regard to the Wacos, the only names I know of for the Wacos are variants of the common names:

427½ "Proper name, Wigá; Spanish form, Hueco; common form, Waco."

427¾ [Deposition of James Mooney. Record, United States *v.* Texas, vol. 1, page 675. (Continued.)]

"The white people, or at least the maps, commonly applied the name Wichita Mountains to them—the whole range of mountains in that general location, running from Fort Sill west; but the Indians call by that name only the immediate western spur. They say they called them by that name because that is where the Wichita Indians used to live; then they have told me approximately when the Wichitas left that neighborhood and moved down to where they now are. When I visited the Wichitas first I sent for, or talked with, two of their oldest people (a man and a woman). One of them had lived at this place when
428 it was a Wichita settlement; they told how they had lived in said earth lodges there, as I have described, and told how, when they had left that country and moved up further into the prairie, and more especially in recent years, when they had come into friendly terms with other former enemies of surrounding tribes, they had largely discarded their old style of earth lodges and taken instead the tepee of their immediate neighbors. They still have, as I said, a few old earth lodges. They told me also that when they had lived there at this place they had used stone metates of the kind that I have found there—of the same kind that I had seen very recently used among the Navajoes. They told me
429 the name of the village there in their own language. They said that when they had left there they had moved first to the vicinity of Fort Sill, which is, I guess, about fifty miles, and afterwards they had come down to about their present location on the north side of the Wichita. They told me when they had left there, and fixed the date by what is called by all the prairie tribes, north and south, from Dakota down, the year that the stars fell. As Indians do not have our system of chronology, they fix events by important phenomena, or things of that kind. The stars fell, in the Indian way of putting it, in November, 1833; that was the date of the great meteoric display over that Western country, and it is recorded in pictures upon the Sioux calendar, that we have in the
430 possession of the Bureau, that contains the chief events in the history of the Sioux tribe clear back to about 1820. The same event is recorded on two Kiowa calendars, which I have obtained from the Kiowas and have in my possession in the Bureau. They told me that they had left this village the summer after the stars fell, which would mean the summer of 1834."

431 EXHIBIT H. E. P., No. 161.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.
No. 18932.

Claimants' evidence in rebuttal, No. 161—Extract from letter of Stokes a Arbuckle, Sept. 15, 1835.

(Filed, Jul. 30, 1896. Court of Claims.)

432 WASHINGTON, D. C., *July 15, 1896.*

The annexed document is an accurate extract from a letter Montfort Stokes and M. Arbuckle, commissioners, to Hon. Lewis Ca Secretary of War, dated Sept. 15, 1835, now on file in the office of t Commissioner of Indian Affairs.

H. E. PAINE.

433 "FORT GIBSON, *Sept. 15th, 1835.*

"The Hon. LEWIS CASS,
"*Secretary of War.*

"SIR: * * * As some confusion has existed, both here and el where, with respect to the names of the nations of the great weste prairie, who reside and hunt to the west and southwest of this post, deem it proper to inform you that there are but three distinct nations these Indians, with the exception of one or two small tribes, who resi far south of the Red River, in the province of Texas. These thr nations are the Comanches, who are the most numerous, but who ha no fixed or permanent villages, and follow the herds of buffalo, wi their movable lodges, and are some times north and at other times sou of Red River.

434 "The Witchetas consist of several bands, some residing nor and some south of Red River; those residing north of Red Riv are the Towee ash and Wachos. They have fixed villages and rai some corn and vegetables.

"The Kioaways have no fixed villages, but wander from the cre timber, on the Arkansas, Canadian, and Red River, to the Rock Mountains, and are some times, but not often, south of Red River.

"We are, with great respect, your obdt. servants,

"MONTFORT STOKES.
"M. ARBUCKLE."

435 EXHIBIT H. E. P., No. 163.

United States Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, claimants, v. THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants. } No. 18932.

Claimants' evidence in rebuttal, No. 163.—Extract from Darby's Description of Louisiana.

(Filed Jul. 30, 1896. Court of Claims.)

436 WASHINGTON, *July 15, 1896.*

The annexed document is an accurate extract from William Darby's Geographical Description of the State of Louisiana, second edition, 1817, taken from page 827 of the record of the case of The United States v. The State of Texas, now in the Library of Congress.

H. E. PAINE.

437 [Extract from Wm. Darby's Geographical Description of the State of Louisiana, second edition, 1817. Record, United States v. Texas, page 827.]

"The Panis, or Towinche, Indians have their village on Red River at 97° W. lon. and 35° 20′ N. lat. The 32° N. lat. intersects the Sabine at 94° 05′ W. longitude, distant from the Panis village upward of 160 miles in a direct line. A ridge of hills winds along the south bank of Red River, near the Panis village, discharging the waters southward toward the gulph. The streams near the village are supposed by some to be the sources of Sabine, but from the diminutive column of that river when it passes 32° N. lat., it is extremely improbable it can draw its sources from so great a distance. The general range of the rivers
438 would indicate the neighborhood of the Panis as the sources of the Trinity, which is not even so well explored as its neighbor, the Sabine."

439 U. S. Court of Claims.

THE CHOCTAW AND CHICKASAW NATIONS, vs. THE UNITED STATES ET AL. } No. 18932.

Request for call on Interior Department.

The claimants ask the court to request the Secretary of the Interior to deliver to the bearer hereof, who is a messenger of this court, for the inspection of the court, on the trial of the above entitled cause, the following original papers, viz:

1. The printed address of the U. S. commissioners who attended the Fort Smith council of 1865, with an indorsement in pencil thereon.

2. The reply of the committee on the part of the Choctaws and Chickasaws to the said address, dated Fort Smith, Arkansas, 19th September, 1865.

H. E. PAINE,
Of Counsel for Claimants.

439½ (Indorsed:) (Copy.) U. S. Ct. Claims, No. 18932. The Choctaw Nation et al. vs. The United States et al. Request for call on Int. Dept. H. E. Paine, of counsel for cl'ts.

440 DEPARTMENT OF THE INTERIOR,
Washington, January 24, 1898.

JOHN RANDOLPH, Esq.,
Assistant Clerk, Court of Claims,
Washington, D. C.

SIR: I am in receipt of a call of the Court of Claims requesting to be furnished with certain papers relating to cause No. 18932, the Choctaw and Chickasaw Nations vs. The United States, as set out in the petition of Hon. H. E. Paine, of counsel for claimants.

In response thereto I transmit herewith a copy of a communication of the 22nd instant from the Commissioner of Indian Affairs, and accompanying papers.

Very respectfully, C. N. BLISS, *Secretary.*

542, Ind. Div., '98. 2 inclosures. M. E. W.

441 [3 enclosures.]

Refer in reply to the following: Land, 3490–1898.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, Jany. 22, 1898.

The honorable the SECRETARY OF THE INTERIOR:

SIR: I have the honor to acknowledge the receipt, by your reference for immediate report, of a call from the Court of Claims issued January 21, 1898, at the request of counsel of claimants for the inspection of the court, on the trial of cause No. 18932, The Choctaw and Chickasaw Nations vs. The United States et al., the following original papers:

1. The printed address of the U. S. commissioners who attended the Fort Smith council of 1865, with an indorsement in pencil thereon.

2. The reply of the committee on the part of the Choctaws and Chickasaws to the said address, dated Fort Smith, Arkansas, 19th September, 1865.

In compliance with said reference I transmit herewith said original papers, taken from the package entitled, "Papers rel. to councils held at Fort Smith, 1865," a part of the files of this office.

The call of the Court of Claims is herewith returned.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

2 We propose to renew the treaty stipulations that existed previous to or at the breaking out of the rebellion, so far as regards the nuities.

The Gov'm't will insist on purchasing a portion of their lands for the tlement of friendly Indians.

No part of any moneys expended by the President in providing for the ief of destitute Indians which were reduced to want on account of ir friendship to the Gov'm't will be refunded.

A stipulation of general amnesty among themselves must be incorpo-ed, and no individual shall be proscribed or any act of forfeiture or nfiscation passed against those who remained friendly to the U. S., but y shall enjoy equal privileges with other members of the nation.

3 ADDRESS OF THE COMMISSIONERS.

BROTHERS: After considering your speeches made yesterday, the com-ssioners have decided to make the following reply and statement of the ficy of the Government:

BROTHERS: We are instructed by the President to negotiate a treaty treaties with any or all of the nations, tribes, or bands of Indians in Indian Territory, Kansas, or of the plains west of the Indian Terri-y and Kansas.

The following-named nations and tribes have by their own acts, by king treaties with the enemies of the United States at the dates here-er named, forfeited all right to annuities, lands, and protection by the ited States:

The different nations and tribes having made treaties with the rebel vernment are as follows, viz:

The Creek Nation, July 10th, 1861.

Choctaws and Chickasaws, July 12th, 1861.

Seminoles, August 1st, 1861.

Shawnees, Delawares, Witchitaws, and affiliated tribes residing in sed territory, August 12th, 1861.

The Comanches of the prairie, Aug. 12, 1861.

The Great Osages, Oct. 2d, 1861.

The Senecas, Senecas and Shawnees (Neosho Agency), Oct. 4th, 1861.

The Quapaws, Oct. 4th, 1861

The Cherokees, Oct. 7th, 1861.

By these nations having entered into treaties with the so-called Con-derate States, and the rebellion being now ended, they are left without y treaty whatever, or treaty obligation for protection by the United tes.

Under the terms of the treaties with the United States and the law of ngress of July 5th, 1862, all these nations and tribes forfeited and lost their rights to annuities and lands. The President, however, does t desire to take advantage of or enforce the penalties for the unwise ions of these nations.

The President is anxious to renew the relations which existed at the aking out of the rebellion.

We, as representatives of the President, are empowered to enter into w treaties with the proper delegates of the tribes located within the

so-called Indian Territory and others above named living west and north of the Indian Territory.

Such treaties must contain substantially the following stipulations:

1. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and with the United States.

2. Those settled in the Indian Territory must bind themselves, when called upon by the Government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians in the Territory, and with the United States.

3. The institution of slavery, which has existed among several of the tribes, must be forthwith abolished and measures taken for the unconditional emancipation of all persons held in bondage and for their incorporation into the tribes on an equal footing with the original members or suitably provided for.

4th. A stipulation in the treaties that slavery or involuntary servitude shall never exist in the tribe or nation except in punishment of crime.

5th. A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes now in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by Government, or such as may be fixed by the Government.

6th. It is the policy of the Government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one consolidated government, after the plan proposed by the Senate of the United States in a bill for organizing the Indian Territory.

7th. No white person except officers, agents, and employees of the Government or of any internal improvement authorized by the Government will be permitted to reside in the Territory unless formally incorporated with some tribe according to the usages of the band.

BROTHERS: You have now heard and understand what are the views and wishes of the President, and the commissioners, as they told you yesterday, will expect definite answers from each of you upon the questions submitted.

As we said yesterday, we say again, that in any event those who have always been loyal, although their nations may gone over to the enemy, will be liberally provided for and dealt with.—Fort Smith New Era print.

444 FORT SMITH, *19th Sept., 1865.*

The committee on the part of the Choctaws and Chickasaws reply to the propositions made on the part of the United States as the basis of new treaties:

That we are pleased to learn that you propose to renew your previous relations with us, and we are willing to go into negotiations for the making of a new treaty with the United States, and as a basis of this new treaty accept art. 1st & 7th.

In reference to the requirements of the 2d article, we desire to say that we wish as far as possible to avoid coming in conflict with our red brethren, should any of them be so unfortunate as to get into conflict with the United States authorities. We are willing to guarantee all our influence in favor of peace in all its bearings with our red brethren, and will not object to any of our citizens volunteering for service in any war

in which the United States may become involved, for the aiding of the United States.

We are willing to enter into negotiations for the settlement of all the points contained in the 3d & 4th articles.

On certain terms, on which we can doubtless agree with you, we are willing to admit the settlement of other tribes within our territory, as proposed in the 5th article.

We are willing to submit the Territorial bill referred to in the 6th
445 article for the consideration of our respective general councils, and for this purpose request a copy of that bill for the principal chief of the Choctaw Nation and for the governor of the Chickasaw Nation.

We accept art. 7th and are willing to have the provisions thereof incorporated into the treaty.

We are also willing to incorporate a provision that no individual shall be proscribed, or any act of forfeiture or confiscation passed against those who remained friendly to the U. S., and that they shall enjoy equal privileges with other members of the nation.

R. M. JONES,
Chairman of the Committee of Choctaw & Chickasaw Com'rs.

445½ (Indorsed:) 18932. The Choctaw and Chickasaw Nations v. United States et al. Reply of Interior Dept. Filed Jan. 24, 1898. Court of Claims.

Address of the Choc. & Chick. com'rs in regard to the propositions for a treaty. Dept. of the Interior. Received Jan. 24, 1898. Indian div. 542.

446 In the Court of Claims. Term 1897–8.

THE CHOCTAW NATION AND THE CHICKASAW Nation *vs.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians.	No. 18932.

Objection of counsel for defendants to paper offered in evidence.

The counsel representing the United States and the defendant Indians object to the paper produced in court by General Paine on January 20, 1898, and offered in evidence for the following reasons:

First. While the paper produced may be a part of the official records of the Department of the Interior, it does not come before this court in the proper manner. If it is an official record, it should be delivered to the court by an accredited representative of the Department in whose charge it is.

Second. The written paper dated Fort Smith, Arkansas, 19th
447 September, 1865, is not printed in the official record of the Fort Smith council as it appears in the report of the Secretary of the Interior for 1865 (pp. 496–537). Certain statements signed by R. M. Jones, president of the Choctaw commissioners, and David Birney, president pro tem. of the Chickasaw commissioners, are printed in that official report; but this paper purports to be signed by R. M. Jones,

chairman of the committee of Choctaw and Chickasaw commissioners. Of the constitution of that committee we have no knowledge, nor do we know whether this report was accepted by the whole body of Choctaw and Chickasaw commissioners and submitted by them officially to the United States commissioners; and from the fact that it does not appear in the official report we believe that it was not officially adopted and presented by the Choctaw and Chickasaw commissioners, or, if so presented, was subsequently withdrawn, and we therefore object to it on this ground.

Third. The printed paper attached to the written paper by a pin is a copy of the address of the commissioners of the United States printed in the report of the proceedings of the Fort Smith council at pp. 502 and 503 of the report of the Secretary of the Interior for 1865; but we have no knowledge of the authenticity or official character of the pencil memoranda on the back, nor of whether those pencil memoranda were ever submitted to the Choctaw and Chickasaw commissioners. We therefore object to said paper, as far as concerns the pencil memo-
448 randa, on the ground that they are not signed, and that it has not been proved who wrote them, when they were written, in what capacity the writer acted, or that they were ever shown to the Choctaw and Chickasaw commissioners.

CHARLES C. BINNEY,
Special Attorney.

J. M. VALE,
A. A. LIPSCOMB,
PHILIP WALKER,
W. C. SHELLEY,
Counsel for the Wichita and Affiliated Bands of Indians.

449 (Indorsed:) Court of Claims. No. 18932. Choctaw Nation and Chickasaw Nation vs. The United States and the Wichita and affiliated bands of Indians. Objections of counsel to paper offered in evidence. Filed Jan. 22, 1898. Court of Claims.

450 In the Court of Claims of the United States.

THE CHOCTAW NATION AND THE CHICKASAW Nation
vs.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians.
No. 18932.

And now comes the defendant Indians, by their attorneys, J. M. Vale and A. A. Lipscomb, and for more specific objection to certain items of evidence offered by the claimants, show the following reasons why the same should not be received:

Evidence in chief:

No. 34. Of the two forks of a river shown in the approximate location of the Arkansas, that to the south bears, in the original, the legend "R. des Acansa;" the upper fork has no name. In the tracing tendered to the court there is no name on either.

No. 28. The tracing omits lettering which shows that the dotted line on the left-hand side of the tracing is the western boundary of Louisiana, thus differing materially from other items of evidence tendered by the claimants.

Evidence in rebuttal:

No. 42. Waco village omitted on North Fork of Red River, across from the Pawnee Pict village. Important because of evidence of long existence of Waco village.

No. 59. Words "Leased country for Caddoes, Wichitas, and Kechies," across face of map, omitted in tracing. A certified copy of the original is in evidence.

J. M. VALE,
A. A. LIPSCOMB,
Attorneys for Defendant Indians.
W.

451 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and the Wichita and affiliated bands of Indians. On behalf of defendant Indians. Exhibit No. . Objection to certain items of claimants' evidence. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants. Philip Walker and William C. Shelley, counsel. Filed Feb. 15, 1898. Court of Claims.

452 *Evidence for defendant Indians.*

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453 *Extracts translated from the original French in a work entitled Discoveries and Establishments of the French in the West and South of North America (1614–1754). Memoirs and documents gathered and published by Pierre Margry; 6 volumes, Paris, 1876–1886.*

(Library of the Bureau of Ethnology.)

ACCOUNT OF NICOLAS DE LA SALLE, 1682.

(I Margry, 547, et seq.)

(P. 554.) The Arkansa said that there were four villages and showed by signs where they were. * * * We made about eight leagues, and on the left found a village of the Akansa. They were all on a hunt. We made another six leagues and came to a river which is called Akansa. There is still another Akansa village there, where we slept.

RELATION DE JOUTEL.

(III Margry, 438, et seq.)

XVI.

Among the Arkansas.

* * * * * * *

(P. 443.) We learned that these people were tractable and how much they desired that M. de La Salle should return from the lower river, as he had promised them at the time of their discovery; we learned also that this nation of Arkansas was composed of four villages bearing different names. Two of the villages are situated on the banks of the Colbert [Mississippi] River and the two others on the river called Arkansas.

* * * * * * *

(P. 443.) They are established in a very good country, and, according to the report of the two Frenchmen, behind the house they have fields, which are not far off, and in which there are a quantity of buffalo, roes, stage, and does.

* * * * * * *

(P. 444.) The villages of the nation are called: The first, Otsote, [elsewhere called Otsotchaue]; the second, Thoriman; the third, Tonguinga; and the fourth, Cappa, of which we have already spoken; although this nation is in general called Akansa, none of the said villages bear this name. The first two are situated on the banks of the river Arkansas and the two others on the river Colbert, the one on one bank and the other on the other.

* * * * * * *

(P. 452.) We arrived at six o'clock in the evening at the first village, or rather the second, named Thoriman, which was about five or six leagues distant from the first.

* * * * * * *

(P. 454.) I saw at one or two gunshots distant the river Colbert, which was very large and rapid. Couture said that the village was on a kind of island, upon which we had descended by a fork which the river
454 made about a league above, although the river was still fine before the said village. Couture also told me that there was also another branch which passed behind the first village, but that it was smaller.

* * * * * * *

As to the savages of this village, they have even the advantage for the hunt over the others, having the use of the river or better, the rivers, by means of canoos, of which they have a large number very well made.

* * * * * * *

(P. 457.) We entered into the river Colbert or Mississippi, which we had so much desired. We passed to the other bank.

* * * * * * *

We arrived at eleven in the morning at the other village, which is about two leagues from that which we had quitted.

* * * * * * *

This was constructed in the same manner as the others, although it was not so large, which led to its being called Tonigua, which signifies "little village," according to what Couture told us. It is situated on the bank of the river Colbert, on the right, ascending.

* * * * * * *

(P. 458.) The 30th [July, 1687], we left the said village to go to that of the Kappa, which was the last of that nation and which they told us was eight leagues off.

* * * * * * *

(P. 462.) This village is situated on the left of the river, going up, on a height of thirty feet. The village is larger than the others.

* * * * * * *

From what I was able to learn, there were four hundred warriors in this village, and at least three hundred in the others.

COPY OF THE JOURNAL OF THE VOYAGE OF M. DE BIENVILLE, FROM THE TAENSAS TO THE VILLAGE OF THE YATACHES, BY LAND. (MARCH 22 TO MAY 18, 1700.)

(IV Margry, 432 et seq.)

The 22d of March I left the village at nine o'clock in the morning with twenty-two Canadians, six Taensas, and one Ouachita. I marched all day in a flooded country in water halfway up the legs and to the knees. In the evening I was on the banks of a little stream seventy paces wide and very deep, distant about four and a half leagues west from the Taensas. I found the Ouachitas there with several canoes partly loaded with salt. They abandoned their village to go and live with the Taensas. They came thence by little rivers, practicable in high water.

* * * * * * *

The 28th I arrived at the village of the Ouachitas. * * * This village is on the banks of the river Marne or Sabloniere [Red River], or rather on a branch of that river. There were only about five cabins there and about seventy men. * * * From what I could learn this village is twenty leagues from that of Taensas, while that of the Coroas is six leagues to the north and six or seven degrees north of west.

455 MEMOIRE ON THE NATCHITOCHES.

ARCHIVES OF THE MINISTRY OF THE MARINE—GENERAL CORRESPONDENCE OF LOUISIANA. BEFORE 1730.

(VI Margry, 228.)

(P. 229.) The Red River is divided into two branches at forty leagues from where it flows into the Mississippi at a place called the Rapid, and these two branches into different channels which flow from a quantity of lakes, which prevent communication between the post and New Orleans when the waters are low, which lasts for half the year; then as they reunite 41 leagues above Natchitoches, where, after having formed an obstruction of trees for 10 leagues [the Big Raft], it is beautiful and navigable in its season for 200 leagues higher up. Its source is still unknown, because of the savage nations who are enemies; but its general course is west-northwest, which leads to the belief that it is not far distant from the Missouri. The nations who live near or who are established on its course, from its mouth to points within our knowledge, are the Aouayeilles, the Innatchas, the Quiouahans, and the Touacanna or Paniouassas; these last are near the river of the Otouys.

All these nations have their superstitions; though different, they center around the same point, the belief in a good and a bad spirit. They never invoke the good, because it can not do them harm, as they say. It is only the bad that they fear, because it may come to injure them.

The largest commerce that could be had with these Indians would be in horses, pelts, bear's oil, or slaves, because they appear to have nothing else but these which form all their wealth.

I do not think there are any mines in the region, or if they are discovered, it will be only after some time. They ought, however, to be discovered on the side of the Illinois, who are more to the north, and above all in the mountains of the Cannesis and the Padoucas, which are towards New Mexico. The French have a post of six men at the Cadodaquious or Nassonites, more annoying than profitable to the nation by the bad idea which the savages form from their small number.

RELATION OF THE VOYAGE OF BENARD DE LA HARPE—DISCOVERY BY HIM OF SEVERAL NATIONS SITUATED IN THE WEST.

(VI Margry, 249 et seq.)

(P. 249.) [Jan., 1719.] We advanced to the mouth of the Ouachita River, 14 leagues from the Mississippi.

* * * * * * *

(P. 260.) The 5 [April, 1719], we continued to march over many hills and prairies. At ten o'clock the war chief of the Nassonites and six headmen who accompanied him, arrived before us with some horses on which we mounted. After having crossed grand prairies and very beautiful country we came to a wood, after passing which we arrived at three in the afternoon at the cabin of the chief of the Nassonites, who was then more than seventy years of age. This chief, with those of the Cadodaquious, Nadsoos, and Natchitoches, awaited me at his cabin, outside of which, under a shed, they had prepared a feast consisting of bread and boiled corn, differently prepared with bear and buffalo meat and fish.

They maintained a profound silence during the repast; it is even
456 the custom of the savages to ask no question of new guests until they have rested or until they speak themselves. Instructed in this savage politeness, I waited until each had eaten; after which, I said to each of these nations, by my interpreters, that the great French chief, of whose word I was the bearer, having learned of the cruel wars made against them by the Chicachas, the Anahons, the Imahans, the Inocas, and the Tonicaux [Osage, Akansas, Tonicas, and Illinois, Beaurain], had sent me to them with several warriors to defend them against their enemies and to assist in their protection; that he had sent orders to their enemies to cease their hostilities, or he would declare war against them.

The chief of the Cadodaquions, who was a respected old man and the most eloquent speaker of these nations, though almost eighty years old, then spoke. He showed these people that the time was come when they must change their tears into gladness, as it was true that the greater part of their countrymen had been killed or enslaved by their adversaries, so that there remained but a small number, but that the arrival of the French would prevent their entire destruction, as their enemies, being allies of the Canouches (meaning the French), would no longer make war upon them, for which they should give thanks to the Great Spirit, whose anger was appeased, and at the same time assist the French with all their power, so as to keep their friendship; that they knew by experience that since the arrival of one of these warriors in their village [Beaurain says, de la Salle], the Naoudiches and other nomadic nations have made peace with them; that they were sad that their compatriots, who had been killed, could not take part in their common joy and add this pleasure to the glory of their lives, which had been sacrificed for the liberty of their country; he said to them on this subject such touching things that all these nations began to weep.

After this chief had ceased speaking, I informed myself, by the old men of these nations, of the nearest establishments of the Spaniards and savage nations on the west of which they had knowledge. They assured me that sixty leagues to the south was the village of the Nadocas, their allies, with whom the Spanish had a mission, and another with the Assinaïs, in the Amediche nation, south one-quarter southwest, seventy leagues from the Nassonites; that eighty leagues to the west, on the right bank of the Red River, were several nomadic nations who were at war against the Cannecy, a savage nation of New Mexico; that 100 leagues to the northwest there were powerful nations situated on the banks of a grand river, but that these countries are unknown to them

It is remarkable that these savages never mistake when they show the part of the world where a nation lives whom they know, and that, finding the direction by the compass, one is certain of their situation as to the distance; they count an ordinary day's journey, according to my observation, 5 leagues.

The 8th, I sent some canoes to my boats with food.

The 7th, I went in a canoe with M. Du Rivage to seek up the river a suitable place to build a habitation. We advanced 10 leagues to the former location of the Natsoo village. This place seemed very suitable to me, there being a fine hill projecting into the water, a suitable situation for a fort, below which the soil is excellent and suitable for raising wheat and all other grains. Then we saw vast prairies, admirable springs,

and many fruit trees. I should have fixed upon this place, with-
457 out the inconvenience of seeking further wild foods, upon which I must necessarily depend the first year. I therefore resolved to establish myself above the chief of the Nassonites to the left of the river, at a gunshot distance. As to the Cadodaquious, they are two leagues below the Nassonites and Natsoos, and the Natchitoches three leagues above, all in a line on the river. These nations are dispersed in different localities; they form no village amongst themselves; their reasons are that being far apart, their enemies can not destroy them all at once, the bad consequence of which is the cause of their destruction. Ten years ago there were 2,500 persons in these nations, which are to-day reduced to 400, who can furnish 200 warriors. In 1717 some families of Yatasses came to live in their village. These are persons who are fond of the French and the first to render them service. They were formerly established 56 leagues away, on the banks of the Red River; but the Chickachas having almost destroyed them, the remainder were compelled to seek refuge, part with the Natchitoches and the others among the four nations. It will, however, be very necessary to oblige them to return to their village, so that they may aid the boats coming up the river, and we might, for the security of that nation, leave with them a detachment of ten soldiers and a sergeant.

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(P. 272.) The desire that I had to discover the nomadic nations of the Red River led me to form the resolution to send there M. Du Rivage, the famous geometer, whom I had brought with me from France. I sent with him four soldiers, six of my men, and eight Nassoos warriors to whom I made considerable presents for engaging in this service. I gave M. Du Rivage 1,500 pounds of merchandise to give to the nomadic nations from me, so as to form an alliance with them, well knowing that it was for the interests of the company to have them for allies, on account of their proximity to New Mexico. I instructed him to inform himself of the nearest Spanish dwelling, and to find if they know of these nations established to the northwest of the *the* Nassonites on the banks of a river, in which case he should do everything possible to conduct me a guide who could lead me thither. He left on his expedition on the 4th of June.

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(P. 276.) The 12th there arrived six savages of the Canicon nation, with two women; their village is situated on the banks of the river of the Arkansas [a day's journey from Touacaro and other peoples who we think are the Mentos. Beaurain.] Our savages rejoiced greatly on their arrival, as it was the first time that nation had ever visited them. They sang them the Calumet and made them some presents.

The 13th, the chief of the Canicons, with his suite, came to see me; I was very friendly with him and made him eat with me. I gave him many presents; I would have had many useful conversations with him, but I had no interpreter. Those who might have served me on that occasion had gone with M. Du Rivage to discover the nomadic nations.

The 16th, several Nadaco savages arrived.

* * * * * * *

The 24th, a savage of the Oulchioni nation arrived.

* * * * * * *

The 29th, M. Du Rivage arrived from his trip with two savages of the Quidehais nation; he reported to me that 70 leagues to the west and
458 to the west one-quarter northwest, he had encountered a party of nomadic nations, who are the Quidehais, Naoudiches, Joyvan, Huanchané, Huané Tancaoye, by whom they had been very well received. He learned that they had just had a battle with a party of the Caney[1] nation, of whom they had the advantage; that the Caney composed a well-peopled village on the banks of the Red River, 60 leagues from the place which M. Du Rivage reached; that the Spanish were established among the Caney, where they worked to draw from the earth a very heavy material; that in time of high water we could go by the Red River to within three days' journey of these nations; that sometimes they have followed them by land up to their village, but that the Spanish had fired big guns at them (a term which they use to indicate cannons or swivel guns).

M. Du Rivage gave these nations the presents destined for them; he asked them, from me, to form a good union with the French, and when he asked them if they knew the nations situated towards the north on the banks of a great river, they assured him that they were their allies, and that the principal one of these nations was called the Touacara [Touacaro, Beaurain]. He then told them I desired to go there in order to form an alliance with them but that I needed a guide. Thereupon the chiefs deliberated among themselves and assured M. Du Rivage that they would find, within a moon, some one to serve me. These people are nomadic, with no fixed residence; they follow the buffalo which serves them for food, as does its skin for clothing. It is on their hunts that they are apt to encounter their enemies. In all, they form a body of 2,500 men; but they are scattered in bands the better to secure their subsistence. These nations are allied with the Quichuan [Quihohaun, Beaurain], situated two leagues from the Red River, on the left, up about where M. Du Rivage found the nomadic nations. These people are bellicose; they almost always have the advantage of their enemies, although inferior in number. The Tancaoyes are renowned above all others; the greater part of their chiefs are scarred with the arrow wounds which they have received. These nations and the Caney are so bitter against each other that the conquerors eat the conquered; they do not even spare the women and children. The arms of both are the arrow and the lance. The Caney have some swords, some coats, cloth, and hats, but they have no firearms, it being the inviolable law among the Spaniards to furnish them with none.

The advantage which the Caney have over their enemies is that they have fine horses, while the other nations have few, and still they were coming from the defeat of their adversaries. [Beaurain says: "The Canneey, whose principal village is that of the Quirirèches, have very fine horses."] In their camps, they form tents of buffalo skin finished like parchment; but in their marches it is strange that their dogs carry these houses on their backs.

It is to be observed that the chain of mountains which extends to beyond the Illinois begins among these villages in latitude 35° 30′, and that from these mountains to Santa Fe, the capital city of New Mexico,

[1] These savages came from destroying a party of the Caney nation with 11 villages established near the sources of the Red River, about where the Spanish have their establishments. (Beaurain.)

it is but 100 leagues over the prairies. The Presidio of Paral, so famous for its richness and its situation, distant only 40 to 50 leagues
459 from Rio Conchas, which falls into the Gulf of California, is situated, they say, in 33° 30′ of latitude, some leagues to the west of the river of the north and about 80 leagues to the southwest of the Caney. The latter ought to know of what importance it is to keep up the posts established on the Red River, particularly that of the Nassonites, which is but 120 leagues distant from the Caney nations in whose country the Spaniards find their gold.

* * * * * * *

I thought it would be to the interest of the king for me to set out to discover those nations said to exist to the northwest, so that alliances might be made with them to facilitate the means of penetrating into New Mexico and to the Padoucas nations, whence the Spaniards draw great wealth. The corporal had arranged with the Nadocas and Assinais for a dozen horses which he brought with him. I bought ten others from our savages; I loaded them with effects and food, and, the 14th of August, I set out with our two Quidehais guides, a Nassonite savage, MM. Du Rivage and de la Filoche, a soldier, two servants, and two negro's. * * *

We advanced three leagues west-northwest the same day. The 12th, we passed several prairies and country filled with vines; we made 6 leagues to the west ¼ northwest.

The 13th, in the same direction we advanced 5 leagues. We passed many oak and nut-tree groves; we camped on a pond.

The 14th, towards the northwest, we marched 6 leagues through a wood of beech, in which we commenced to find stony places. Then we fell into a great prairie, partly rocky, which continues towards the west along the river to the Caney village, established in New Mexico. We see from this point, towards the north, several chains of mountains.

The 15th, we made five leagues to the north-northwest. We crossed the prairie and camped near a "cross roads" formed by two trails; one goes to the west among the nomadic nations, the other to the northwest, which is that which we followed the next day.

The 16th, we made 5 leagues towards the northwest through a very pretty hilly country; we passed the night in a wood of beech.

The 17th, we remained in camp; our guides killed two cows and some deer; but the heat was so great that the meat would not keep more than two days without drying. As this takes time, we could not remain for it.

The 18th, we advanced along several hills and by beautiful prairies and saw slate quarries and many pieces of rock crystal; we made 4 leagues towards the north-northwest.

The 19th, we continued to wind along several hills; at ten o'clock we quitted the shortest road leading to the Tonacaras, because of the difficulty of the mountains, to follow that to the west; at six o'clock, we descended a high hill, at the foot of which we camped, having made 9 leagues towards the west.

The 20th, we passed mountains, very difficult because of the large rocks which we encountered, and the ups and downs over which we were obliged to pass. At ten o'clock we found a pond among the rocks; at noon we stopped near a lake at the foot of a mountain; at five o'clock we camped near a marsh after having made 7 leagues towards the north one-quarter northwest.

460 The 21st we followed a small trail, which wound through several hills; at nine o'clock our guides killed several deer; while they were dressing it I killed a very large bear; we stopped near a brook among the rocks. At eleven o'clock a party of thirty Nassonite and Nadsoo warriors joined us; they were returning to their village for fear of a party of the Anahous (Osage) nations, whose fire they had seen. These Nassonites had been for fifteen days on the hunt, during which time they had killed 46 buffalo; this day we advanced 3 leagues towards the north-northwest.

The 22nd our guides, alarmed by a party of Anahous, who ranged in these parts, wished to quit us; we had to use many remonstrances to persuade them to continue our journey. We made a league and a half towards the northeast, after which we turned to the left and passed several hills and prairies. At four o'clock we were on a little river flowing towards the west. It winds much and falls into the Red River below the Cadodaquious. We entered, afterwards, fine prairies, enclosed in mountains[1] which pass by the Illinois; at this place they are about 30 leagues wide from north to south, and from appearances there are metal mines there, judging from the different colored earths and marcassites which are found and the assurances given by the savages. The route this day was northeast 1/4 north 5 leagues.

The 23rd we advanced into the prairie northwest 1/4 north 2 leagues, after which we passed a small river, flowing south, which winds between many mountains and falls into the river above the old Nadsoo village. We camped then to rest our horses, who were diminished by two, whom we were obliged to abandon, as they could advance no further.

The 24th we continued to advance in the plain to a very thick wood near a brook over which we must go; in the afternoon we entered mountains very difficult to pass, because of the thickness of the woods and the overturned rocks which we encountered there, in addition to which the valley was always ascending; two of our horses perished there. At five in the evening we camped in this valley near a brook, at the foot of many mountains.

* * * * * * *

We made that day five leagues towards the northwest.

The 25th we mounted to the summit of the mountain. Having advanced a league, we came to prairies and valleys very agreeable to the view. We there killed three buffalo. That day we made three leagues towards the northwest.

The 26th, in the morning, we perceived a troup of twenty savages; our guides thought they were lost, having recognized them for Anahous. These are the Osages. * * * Although friends of the French, this nation is perfidious, and it is well to be on one's guard against them. This party approached within bow-shot; our savages wished to fly, but I told them if they did this they were lost; that we alone could save them. We kept a brave front, and the Osages appeared, on their part, to intend to attack us. In this perplexity I advanced towards them with three well-armed Frenchmen, one of whom was the soldier of the garrison, who knew several savage languages. The enemy, surprised

[1] Which is the same chain which leads to the mines situated near the saline of the Illinois. (Beaurain.)

461 at our hardihood, presented a calumet of peace. They then explained that they knew our nation and that we were their friends, but that they proposed to scalp our guides. I opposed their wishes and told them that if they persisted in their design I should find myself forced to fight them. This resolution changed their sentiments; they consulted among themselves and concluded to leave us alone. I made them several presents, after which they withdrew without approaching our guides, who remained on guard with the rest of the people. This same day we found two brooks, some hills and prairies, and made three leagues to the northwest.

The 27th we entered into a fine country, where we perceived a great number of deer. At ten o'clock we passed a small arid mountain; then a brook, near which we rested to pass the heat of midday. At three o'clock we perceived several camping grounds, of which the fires were still lighted, and some signs of horses. Our guides told us that these might be a Caney party. As that nation would have given us no better quarter than to our savages, and as we had reason to fear becoming their prey, we marched on guardedly. Having advanced a league and a half, we crossed a lake on some rafts; one of our horses fell into the water with his load; he was drowned, but we saved the effects which he carried. We camped on the other side of the lake. At five in the evening a Naoudiche savage, who was on the lookout, recognizing us as allies, came to warn us that the camps which we had found were of a Caney war party of sixty men, for whom we should be on our guard; that 6 leagues further on, on one of the branches of the river of the Onachitas, was the head chief of the Naouydiches and forty warriors, who were going to the Touacara village to see the French chief. That day we made six leagues towards the northwest.

The 28th we marched through a beautiful prairie, diversified with hills and thickets; we encountered a prodigious quantity of buffalos and a great number of wolves. They are small and not bad. We also saw many partridges, woodcock, and lapwings. In the evening we climbed to the summit of a rock, after descending which we camped near a small lake; the same night my English dog strayed away, which caused me great regret; we made 3 leagues towards the north ¼ northeast.

The 29th we advanced three leagues towards the north-northeast and crossed a rather difficult wood and several small rocky mountains. We afterwards entered on the prairies, then a very thick wood, in which our guides lost us. After a thousand embarrassments we found ourselves on the western branch of the river of the Onachitas, which separates 20 leagues below from the other branch, which flows from the west-northwest; this river flows into the Red River, 14 leagues from the mouth. At two o'clock in the afternoon we joined the Naouydiche party; * * * (p. 287). The head chief of the Naouydiche and his warriors assured me of much friendship and in that place sang me a calumet, which obliged me to make them new presents. I showed them the marcassites which I had gathered in the mountains. They assured me that in the same chain, to the northeast of where I had passed, they knew of many very heavy metallic stones.

62 The 31st, we marched with the Naouydiche party. We found a very thick wood, on leaving which we entered one less dense; hen some prairies, at the end of which we passed a wood, on the other de of which we stopped on the west-northwest branch of the river of the achitas. This day we made 6 leagues towards the north ¼ northwest. The 1st [September, 1719], we crossed the branch of the river, in hich there were, at the time, two or three feet of water. We followed trail to the right, along a rather thick wood, which lead us to some ights. We reached some prairies and valleys, filled with large shells, ade after the fashion of ricados, in which I found a pearl of very beauful water. I showed it to the Naouydiche chief. He assured me that me days above the villages, to which I journeyed, they found very large es in shells which they fished from the river. We passed near this ace a brook, after which we entered a vast prairie lacking water. At ven in the evening we stopped near a little reservoir of water which found in a hollow. We advanced that day seven leagues to the north. The 2nd, we continued to traverse great prairies, in which we found ooks among thickets, after which we found several abundant coal mines. e passed the night near a lake in a hollow. We made that day 8 agues to the north.

The 3rd, we continued to advance into the prairie near a brook, where e grand chief of the Tonacara nation, accompanied by six other chiefs nations, waited upon me, having had news of my arrival from some aouydiches, who had gone ahead. They were mounted on very beautiful rses, saddled and bridled after the Spanish fashion. Our first complients were passed by demonstrations of friendship, after which the nacara chief said to me, through a Naouydiche, who spoke the Nasnite language, understood by a soldier of the garrison, that the novelty seeing in their country a nation to them unknown could not but surse them, but that the freedom with which we came assured them of r sincerity; that they wished to make an alliance with us, and that our emies should be their enemies.

I represented to them that the chief of my nation, of whose message I s the bearer, had sent me among them to assure them of his protecn and of his friendship, and to offer them help against their enemies; t I accepted, in his name, the alliance which they proposed to me, and t I would take care to inform him of their good intentions. These efs had carried with them bread made of corn mixed with wheat and e dried meats, with which they regaled my troup. Then I mounted a handsome horse which they had brought to me, and we marched in mpany to go to their villages. The country through which we passed s unique. At a gunshot from their habitations we crossed a beautiful ook, running through an open wood, above which are the villages, situd on hills along the southwestern branch of the river of the Alcansas.[1] ese villages make but one, the houses being joined to each other, rung from east to west for a league in the most beautiful situation that

[1] Which is called Imaham, at the high latitude of 37° 45'. Distant from the Nassonite 89 leagues in a straight line to the north. (Beaurain.)

one could see. The nations in these establishments are the
463 Touacaras, Toayas, Caumuches, Aderos, Ouistas, Ascanis, Quataquois, Quicasquiris, and Honechas. They might furnish six thousand persons of both sexes.[1]

On arriving at this village, the chiefs who had accompanied me made me dismount at a gunshot distance from the Touacara chief. Then two head men carried me on their shoulders, the face turned towards the earth. They then put me on a buffalo robe, stretched on the floor. Then all the principal Indians made a circle about me, and each of them put his hand in mine as mark of his good friendship. When my packages were brought into a tent I made my present to the Touacara chief. It consisted of several guns, some powder and balls, some axes, some knives, and several ells of goods. Although he was surprised to see so much merchandise, he showed, however, no emotion, keeping an air of gravity, although he was but about twenty-five years old. To mark his gratitude, he gave me a crown of eagle feathers, trimmed with little birds of all colors, with two plumages de calumet, the one of war and the other of peace, which is the most considerable present these warriors can make.

The 4th, the eight nations sang me the calumet. There were 7,000 persons,[2] including some of the nomadic nations, who had come to these villages expressly to sing to me the calumet. The Toajas and Ascanis chiefs, old men of more than sixty years, conducted the ceremony of this festival. They handled the plumage with an infinite address. They made harangues, "in which they exposed the advantage of our alliance; that we were a warrior nation, who feared no enemies on the way, although we were few in number. Besides, the commerce which they would have with us would be advantageous, since we brought them arms to defend them against their enemies, and many sorts of merchandise suitable for their uses; that they should feed us well so that we might leave them with a full stomach." After they had held these discourses, all the chiefs and head men of these nations recounted to me all their prowess, and told the number of all the scalps which they had taken. Tired of this ceremony, which lasted from eight o'clock in the morning until two hours after midnight, I took the liberty of going to repose and of leaving M. Du Rivage in my place, knowing well that this festival would not finish until the following day at two o'clock in the afternoon, during which the savages would not discontinue their chants nor their dances of the calumet, so that they would be so fatigued and their voices so hoarse that they could hardly be heard.

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[1] These nations are the Touacaro, Toayas, Caunouche, Ardeco, Ousita, Ascanis, Quataquon, Quirasquiris, and Honechas. It is thought that they are the Mento. They may number together 4,000 persons. They are allies of the Panionassa, who are 50 leagues away to the north. Though they are at peace with the Osages, they are cautious of them. This nation is situated 40 leagues to the northeast of them. They are also allied with the nomadic nations established on the upper Red River, but they have a cruel war with the Canecy, the Padoucas, and with some of the Panis villages. They know the Aricaras, established near the Canses in Missouri. According to the report of the old savages, there is a white nation, which trades in metals with some of the Padouca villages, situated fifteen days to the west-northwest; but they rarely go into those countries because of their enemies, not going farther than the mountains, where they find rock salt. They assure me, likewise, that in high water the river was navigable to the neighborhood of the Panionassa, much below their village. But what is peculiar, none of these nations make boats, not knowing how. (Le Chev. de Beaurain.)

[2] 5,000 persons. (Beaurain.)

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464 The 5th the chiefs came to take me[1] from the place where I reposed on a buffalo robe; they carried me to the calumet, which they sang under a shed covered with leaves on account of the heat of the sun; they painted my face with ultramarine blue; then they threw at my feet thirty buffalo robes, many pieces of rock salt, of cakes of tobacco, of vert-de-gris, and some little ultramarine. They added to these presents a young slave of the Cancy nation, aged eight years, of whom they had eaten a finger of each hand, indicating that he was one day destined to serve for the food of these cannibals. Then the chief of the Toajas, which is the most numerous nation, told me that he was sorry to have only one slave to present me; that if I had come a moon sooner he would have given me seventeen of the same nation, which they had eaten at a public feast. I thanked him for his good intentions, regretting myself not to have arrived in time to have saved the lives of these poor unfortunates, by means of which we could have made peace with their nation by sending them home. I gave these nations the presents which were destined for them, amounting to nearly 1,500 pounds.

The 8th I assembled the principal chiefs of these nations to inform myself of the situation of the river of the Alcansas, of the nearest settlement of the Spaniards, and of the commerce which they had with the Padoucas. To which they replied to me that their river formed two branches below their village; that that on which they lived rose [lit., ascended] towards the setting sun among the villages of the Spaniards and Padoucas; that the Spaniards obtained yellow iron from those countries, slaves, and some peltries; that the country of these white men was full of cows and domestic deer; that their prairies were covered with horses and other animals which bore wool; that the Padoucas were a numerous nation whose villages extended a long distance to the north and to the north-northwest; that the Spanish were not allied with all this nation, and that when they went to trade at some distant village, over towards the Aricaras, they were often attacked by the Panis nation, an enemy of the Padoucas. They told me likewise that the Anahous and Missoury, to whom they gave another name, made war upon them, but that they were allied with the two villages of the Ascanis and Ousita, situated to the north-northwest of their home, sixty leagues away; that there were seven famous villages of the Aricaras to the north-northwest, 120 leagues away, with whom they were allied. I think that the Aricaras form part of the forty-five Panis villages.

They confirmed the impression that in the upper river, at several days journey, they found rock salt, vert-de-gris, and ultramarine blue, but that there was risk in going there because of the Cancy, who passed

[1] The 5th, in the morning, the chief came to take him from the place where he had slept, while the headman had watched all night, chasing away, with eagle plumes, the flies which might incommode him. They carried him anew on their shoulders to the calumet, which was sung under a shed that they had prepared and covered with leaves on account of the heat of the sun; they washed his head, his feet, and his stomach, and painted his face with blue and red and put on his head a bonnet of eagle plumes, after which they continued their haraugues and their chants. A little later they threw at his feet several buffalo robes, dressed with the brains of these animals, and likewise made him presents of several pieces of rock salt, of cakes of tobacco, and of stones of color, green and blue. * * * To which they added a young Canneey slave, eight years old, from the Quirroche village. (Le Chev. Beaurain.)

465 those places in going to their wars against the Paducas. One of the chiefs assured me that there was a hill six days from these villages where there was yellow iron that the Spaniards esteemed much. He gave me a stone that he by chance had in the camp.

My design was to leave with this nation three of my people until the Council of Louisiana had decided on that establishment, but I changed my mind when I found that these peoples quit their village in the month of October to go on their hunt, whence they only return in the month of March to sow their corn, beans, and pumpkins, upon which they feed in the summer. The ground in this locality is very fertile; it is black and light. The country is open, and it is only in little districts that we find thickets of oak, nut trees, and mulberries; the prairies are high and suitable for the culture of wheat and other grain.[1] The savages here cultivate a prodigious quantity of tobacco, which they press into small cakes after having powdered it.[2]

The chase is abundant not only for buffalo, bears, and deer, but generally for all the other animals. The river furnishes very good fish, and although the waters were altogether low, there remained a stream two or three feet deep.[3]

These nations raise very fine horses and would be unable to do without them either in war or the hunt; they have saddles and bridles which are very well made, and even wear leather cuirasses, which are arrow proof;[4] their cabins are raised, the greater part built of straw and reeds, coated with earth, forming a dome; above the door each chief of the nation has his arms painted on a piece of round leather; they represent the sun, the moon, and the stars, and different animals.[5]

EXPLORATION IN ARKANSAS—DEC. 10, 1721, TO MAY 25, 1722.

From "Journal of the Voyage in Louisiana" of Bernard de La Harpe. National Library of France. (VI Margry, 365.)

"The 9th (March, 1722) I sent one of my canoes to the village of the Arkansas, on the Mississippi, to trade for food and bring to me one Saint Domingue, a soldier, to serve as interpreter on my trip. The village of the Arkansas is so called because this nation came, as did the Zautoouys, from the direction of the Missouri, from the Kansas nation; they have taken, since then, that of Ougapa. It is situated on the banks of the Mississippi, in an isolated place. * * * The village of Tourima, or of "Potatoes," lies a league to the west of that of the Ougapa, and the Touginga are a league to the north of the former. These three villages are composed of four hundred persons in all; the principal chief is he of the Ougapas. The Zautoouys, likewise, recognize him as their chief; their language is the same and much like that of the Osages."

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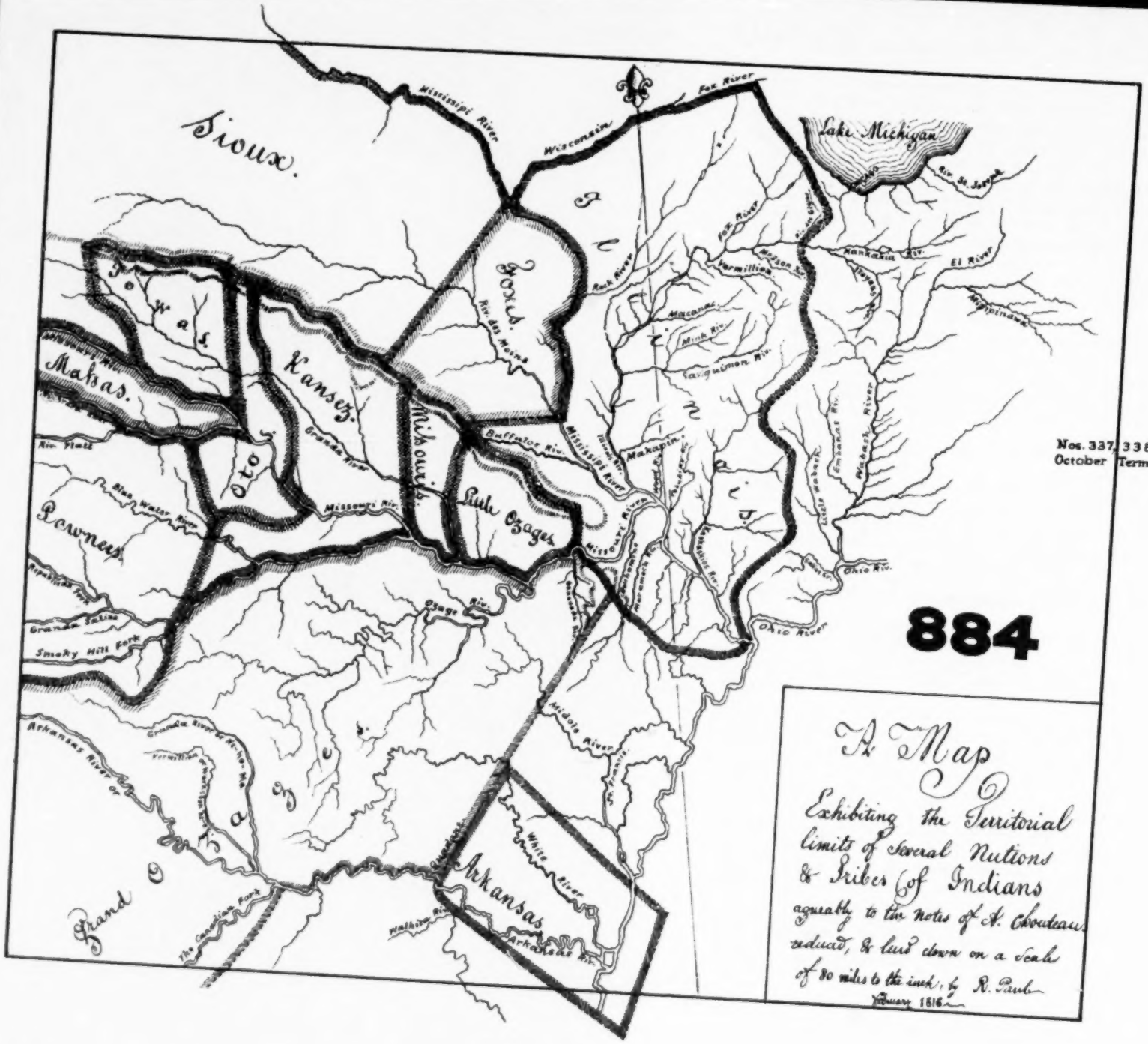
[1] He found there some rosemary, which is the only place where it has been found. (Journal historique, by Chev. de Beaurain.)

[2] Or break between two stones. (Beaurain.)

[3] But the quantity of rocks with which it is filled render navigation very difficult above the villages; so that it can only be undertaken from March to August. (Beaurain.)

[4] They also use shields and even vests of pressed leather, which are a great protection. (Beaurain.)

[5] What is peculiar is that these nations speak different languages, although making but one village. (Beaurain.)



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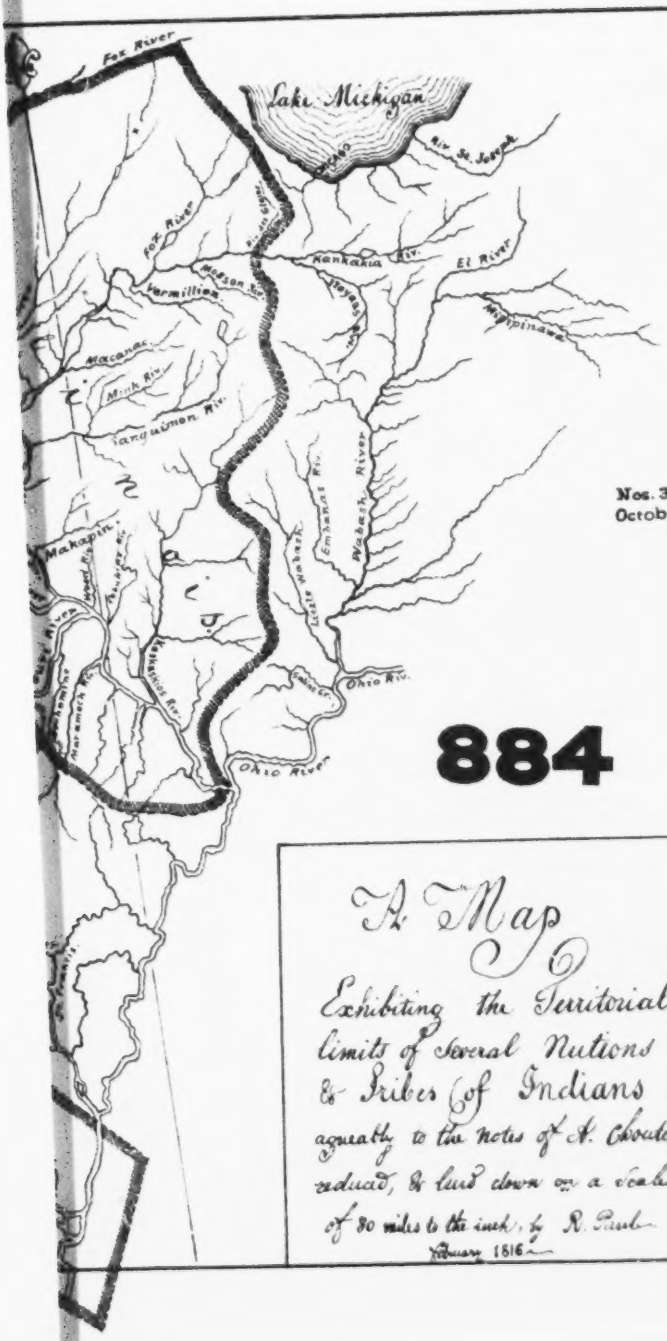

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A Map

Exhibiting the Territorial limits of several Nations & Tribes of Indians agreably to the notes of A. Chouteau reduced, & laid down on a scale of 30 miles to the inch, by R. Paul

February 1816

466 This map accompanies a certified copy of the notes of August Chouteau, of February 21, 1816, on file in the Court of Claims, a printed copy of which is contained in this record.

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

(Here follows map marked p. 467.)

468 *A report of the names and probable number of the tribes of Indians in the Missouri Territory, the amount of annuities paid them, the amount of expenses of provisions issued to them at the distribution of their annuities and on every other occasion, and the amount of presents, other than provisions, which ought to be distributed among them, Missouri Territory.* (*St. Louis, November 4th, 1816.*)

Names of Indian tribes.	Probable No. of each tribe of Indians.		Places where the tribe reside or rove.	Amount of annuities paid per annum.	The annual amt. of expenses of provisions issued and delivered to the tribes on every occasion.	The ant. of presents, other than provisions, which ought to be delivered among the tribes.	Total amount of provisions, presents, and annuities.
	No. of men.	No. of souls.					
Quapaws	340	1,060	In 4 small villages on the south side of Arkansaw River.	.....	$125	$1,000	$1,125

WM. CLARK.

NOTES.

The Indians of North America have always lived in a state of nature, deriving their subsistence from the wild animals of the forest, it follows that as their numbers multiplied and game became more scarce they found it necessary to divide themselves into tribes, and separating themselves from one another to seek new situation more favorable for the supply of their wants. The frequent recurrence of this necessity in a long succession of time has doubtless placed many tribes of the same nation at distances very remote from each other, and the traditions of their ancestors becoming less and less interesting to every new generation, have frequently been wholly forgotten, or too imperfectly recollected to furnish any satisfactory account either of their origin or the various migrations of their nations, and although it is not difficult in many cases to distinguish the different tribes of the same nation by a careful examination of their language, and sometimes by the physiognomy, yet after a separation of many years, and in the meantime mingling themselves with strangers, even these characteristic indications may be lost or become too equivocal to be relied on.

From these causes it frequently happens that different tribes claim the same land, and sometimes a tribe alone claims exclusively a country which belonged in common to the whole nation from which they originated, and hence it is difficult at the present day to ascertain the precise limits of the different nations of Indians who have inhabited the western parts of North America which now belong to the United States. The

following extracts from notes which from time to time I have made for my own satisfaction during a long residence in this country, and many years' intercourse with the Indians therein mentioned, I think may, however, be relied upon, for their general correctness. The first discovery of Chicago River Des Plains, and the communication of the Illinois River with that of the Mississippi, was made in 1672 by one Joliet,
469 a Canadian voyager, whose name will most probably descend to distant posterity from the circumstance of its having been given to an uncommonly beautiful elevation of ground situated in a large level prairie on the borders of the river Des Plains, which has been improperly called Chicago, about forty-five miles from the mouth of Garlick Creek, or the real Chicago on Lake Michigan. Mount Joliet, by which name it has long been called, is nearly one mile in circumference and about three hundred feet high, and, like many others mounds to be found in this section of America, was doubtless erected by the aborigines of the country. From the imperfection of the arts among those people at that early period and the consequent disadvantages under which they must have laboured, those works must have consumed much time and required great perseverance, but the inducements or objects for which they were erected can not be certainly developed and will most probably remain a subject of conjecture and speculation in consequence of indications of an opposite tendency, and various and contradictory traditions concerning them—and for the present I forbear to give my own opinion on this subject because it is not necessarily connected with the objects for which these notes are furnished.

The Illinois nation of Indians in 1673 was more numerous than any other one which then inhabited the country now included within the territories of Illinois and Missouri, and consisted of the tribes of Mascoutins, Miamies, Peorias, Michegamias, Cahokias, Kaskaskias, and Tamaroas, who possessed all the country within the following boundaries, to wit: Beginning at the mouth of the Ohio, running thence a NE. direction to and with the dividing ridge that separates the waters of the Wabash and Ohio from those of the Kaskaskias and Mississippi, thence along said dividing ridge to the head of a branch of the Wabash, thence nearly a north course to the mouth of river Des Plaines, thence including all the waters of said river, thence nearly a NW. line to Fox River of Green Bay, thence up Fox River to its sources, thence in a direct line to the Ouisconsin, thence down the Ouisconsin to its mouth, thence down the Mississippi to a point opposite the mouth of river Des Moins, thence west to the dividing ridge that separate' the waters of the Missouri and Mississippi nearly opposite the headwaters of Buffaloe Creek, thence nearly SE. along the said ridge to a point N. of the mouth of the Gasconade (neess-cou-shin-gaw), thence southwardly to the mouth of the Gasconade, thence to and with the dividing ridge that separates the waters of the Gasconade and Missouri S. eastwardly to the negro fork of Maramcck (or Fish) River, thence eastwardly to the mouth of the Ohio so as to include all the Prairie of Tawapatia.

Within this extensive tract of country all those tribes were settled. The Mascoutins in the northern parts thereof, the Miamis near Chicago, the Peorias on the borders of Lake Pemitewee (now called Peoria), the Michegamias on the right bank of the Mississippi at the spot where now

stand' the flo'rishing town of St. Louis, the Cahokias on the left bank of the Mississippi at the village which still bears that name, the Kaskaskias on the Kaskaskias River about twelve miles above its confluence with the Mississippi, and the Tamaroas on the Kaskaskias River about thirty miles above the village of the Kaskaskias.

470 Though separated by a considerable distance between them, those tribes remained in one general confederacy, making a common cause and uniting their joint efforts in all the wars in which they were engaged against their common enemies, who on the north were the Sioux, Chippawas or Orgeboas, Iroquois, Hurons, Episingles, Algonkins, Ottawas, Pottewattomis, Menomences, Sacks and Foxes, and on the south were the Choctaws, Cherokees, &c., and notwithstanding the very formidable adversaries who continually assailed them on every side they would have been able to have maintained their ground had it not been for the introduction of ardent spirits among them, in which they indulged to such excess as in a great measure contributed to destroy both their phisical and moral capacity to contend efficiently with so many powerful opponents. At length, however, the Mascoutins and Miamies, being the most exposed, were so constantly engaged in bloody conflicts with their neighbours and were so harrassed by their predatory incursions that they removed to a river in the State of Ohio (which since then has borne the name of the latter tribe). Encouraged and emboldened by the emigration of those two tribes, the northern hive of barbarians united their strength, and, redoubling their exertions, waged continual war against the Peorias, who, being deprived of their former assistance and protection and discouraged by repeated disasters, finally moved down to the mouth of the Illinois River; but even here their vindictive enemies soon pursued them—eventually compelled them to remove lower down the Mississip'i to a prairie, on which Fort Chartres was afterward built, to which place the Michigamias and Cahokias, being also compelled to remove from similar causes, soon afterwards followed them. Here those three tribes concentrated their whole forces, built a strong fort, and, having three thousand warriors, were able successfully to oppose their enemies, who, notwithstanding, continued to harrass them. But while by their change of situation they avoided the destructive tomahawks of their former foes, they acquired a greater facility of obtaining ardent spirits, which proved still more injurious to them, for, besides the diseases which arise from unlimited indulgence in the use of ardent spirits, they became so infuriated with it that they frequently killed one another, and instances have been known of whole families having been destroyed in the mutual retaliations of murders that were produced by intoxication.

The Kaskaskias and Tamaroas, having had the same enemies to contend with and being victims to the same vices, were also very nearly destroyed in the same way. So that of the once great and powerful nation of Illinois there remains (with the exception of the Mascoutins and Miamies) only about seventy persons, including men, women, and children, near Kaskaskias, and a few strag'ling Peorias about St. Genevieve. There is, however, a tradition amongst those Indians that before they had ever seen a white man a band of their nation, who was settled at the Saline, near St. Genevieve, where they had a large village, moved to the

Wabash country, since which time no accounts have ever been received concerning them.

That the Illinois Nation owned the tract of country above described as belonging to them neither my own knowledge nor the information which I have received in the course of my residence in this coun-
471 try will permit me to doubt; and, independent of the treaty concluded at Vincennes on the 13th of August, 1803, between the United States and the remnant of that nation, I have never seen or heard anything that could create a question upon the subject. In that treaty are contained the following words:

"The Kaskaskia tribe of Indians, so called, but which tribe is the remains and rightfully represents all the tribes of the Illinois Indians, originally called the Kaskaskias, Michigamias, Cahokia, and Tamarois, relinquish and cede to the United States all the lands in the Illinois country which the said tribe has heretofore possessed (excepting a very small part thereof), and declare the boundary line of said claim to be as follows: Beginning at the confluence of the Ohio River and the Mississip'i; thence up the river to the mouth of Saline Creek, about twelve miles below the mouth of the Wabash; thence along the dividing ridge between the said creek and the Wabash until/ it comes to the general dividing ridge between the waters which fall into the Wabash and those which fall into the Kaskaskia River, and thence along the said ridge until/ it reaches the waters which fall into the Illinois River; thence in a direct course to the mouth of the Illinois River, and thence down the Mississip'i to the beginning."

From the description of their country as here given it might be construed into an admission that their claim never extended beyond those boundaries. But either they cared nothing about the country they described, and were intent only on receiving the stipulated equivalent, or they must have been so depressed by the variety of their misfortunes and so stultified by their intemperance and debaucheries as to have totally forgotten all the traditions of their ancestors. It is worthy of remark that even the very spot where the village of Peorias stood, and at which the tribe whose name it bears actually long resided, is not included within the above-mentioned cession. And in opposition to the inferences which this treaty would seem to justify I beg leave to refer to the sale of two tracts of land which a part of those tribes sold on the 5th July, 1773, to Wm. Murray & Co., "one of them beginning at the mouth of Heron Creek, being about a leag'e below the mouth of Kaskaskia River; thence northward of east course in a direct line back to the Hilly Plains (8 leagues); thence the same course in a direct line to the Crab Tree Plains, 17 leagues; thence the same course in direct line to a place known by the name of Big Buffaloe Hoofs, 17 leagues; thence the same course in a direct line to the Salt Lick Creek, 7 leagues; thence crossing the said creek about one league below the ancient Shawnese town in an easterly or a little to the north of east course in a direct line to the river Ohio, 4 leagues; thence down the Ohio to the Mississip'i to the beginning, 33 leagues. The other beginning at a point on the Mississip'i opposite the mouth of the Missouri; thence up the Mississip'i to the mouth of the Illinois; thence up the Illinois to Chicagou or Garlick Creek; thence nearly a northerly course in a direct line to a certain

place, remarkable, being the ground on which an engagement or battle was fought forty or forty-five years ago between the Peorias and Fox Indians, 50 leagues; thence by the same course in a direct line to two remarkable hills close together in the middle of large prairie, 14 leagues; thence a north of east course in a direct line to a remarkable spring,
472 known by the Indians by the name of Foggy Spring, 14 leagues; thence the same course in a direct line to a great mountain to the northward of White Buffaloe Plain, 15 leagues; thence nearly a southwest course in a direct line to the point of beginning, about 40 leagues."

Whatever may be the force and effect of these sales, they at least afford strong corroborating testimony that those Indians then considered their claim much more extensive than it is represented to be in the treaty above referred to.

After the tribes of Mascoutins, Miamies, and Peorias had abandoned their residences in the delightful country which they had inhabited, it remained unoccupied by any particular tribe till the year 1743, when a part of the Pottowatimies who resided near Detroit, together with some bands of Ottawas and Chippewas, removed to it and settled themselves near Chicago and on some parts of the Illinois River, and have continued in the uninterrupted possession thereof to the present time. This possession is presumed to have been taken conjointly by those three tribes, in consequence of their having formerly, at Michilimakinac, entered into an alliance, offensive and defensive, with all the solemnities and ceremonies usual among savages on such occasion; and of their having under that alliance contributed their joint exertions in expelling the Illinois Indians from that country which they now claim by right of conquest. It appears, however, by the treaty concluded at St. Louis, of the 3th November, 1804, between the United States of the one part and the Sacks and Foxes of the other, that the latter ceded to the former the following tract of land, viz: "Beginning at a point on the Missouri River, opposite to the mouth of the Gasconade River, thence in a direct course so as to strike the river Jeffreon thirty miles from its mouth; thence down the Jeffreon to the Mississipi, thence up the Mississipi to the mouth of the Ouisconsin and up the same to a point which shall be thirty-six miles from its mouth in a direct line; thence by a direct line to the point where the Fox River (a branch of Illinois) leaves the small lake called Sakaegan (Liar), thence down the Fox River to the Illinois, and down the same to the Mississipi."

This cession includes the land on the Illinois which is claimed and occupied as aforesaid by the Ottawas, Chippewas, and Petowatomies, who state that they never heard of that sale till the latter part of the year 1815, when they immediately sent a talk to Gov'r Edwards, and enclosed an address to the President of the United States, asserting their own right, denying that of the Sacks and Foxes, and requesting that the title should be investigated. They contend that the Sacks and Foxes contributed but little to expel the Illinois Indians from any part of their possessions, and that whatever claim the Sacks and Foxes may have to the northern part thereof, they can have none to that which lies on the Illinois River, as they never occupied any part of it, nor had ever pretended to set up any claim in opposition to that of the Ottawas, Chippawas, and Potowatomies.

The Sacks formerly resided near Detroit, but being compelled by a war with the Hurons, who were assisted by the French, to abandon their native country in the year , they moved to Winabago Lake, where they took refuge among the Foxes. There they were again harrassed by the French and some of the northern tribes of Indians. The Foxes, who had afforded them their hospitality, found also themselves
473 engaged in a war with all the enemies of the Sacks, and, at length, these two tribes, finding it difficult to resist the attacks to which they were continually exposed, left their villages and removed to the Ouisconsin, on the left bank of which they settled. Here they were again besieged in the year (———) by the French and northern Indians, who overcame them, killed a great many of their men, and completely routed them. Those who escaped ran to the prairies where the branches of Rock and Fox rivers interlock, and there hastily erected a fort, but where soon afterwards again so closely besieged by the French and Indians (among which were the Illinois) that they were reduced by famine to the last extremities, all hopes of escape failing them, and seeing no other way to extricate themselves, two of their principal chiefs—La Biche (the lap dog) and La Peau Blanche (the white skin)—caused their arms to be tied, took a white stick in their hands, and, singing their death songs, presented themselves with the utmost humility to their assailants and earnestly begged for life and peace, which were indeed granted them by the French commanding officer, but upon hard conditions, which were imposed with the consent of all the Indian chiefs who composed a council that was held for that purpose. The peace thus concluded put a final end to the war and all controversies between the French and northern Indians of the one part and the Sacks and Foxes of the other part; but it eventuated in those latter tribes entering into the alliance that was formed to destroy the Illinois Indians, who, as has been already mentioned, found the combination against them too powerful to be resisted. The Sacks and Foxes, finding these Indians compelled to leave their country and in no situation to prosecute the war, left their village on the Ouisconsin, gradually descended the Mississippi, and in 1764 settled on Rock River, twenty-one years after the Potowatomies and their allies had settled on the Illinois River. The Foxes, or rather a band of them, also removed, in the same time, to a place called the Spanish Mines (Dubuque's), and no other tribe having opposed them they have for a long time continued in the uninterrupted possession of that tract of country which is bounded on the east by the Mississippi River, on the south by the country of the Illinois Nation, on the west by the dividing ridge that separated the waters of the Missouri and Mississippi rivers, and on the north by the country of the Sioux.

No other of the northern Indians are known to set up any claim to the lands of the Illinois Nation except the Ottawas, Chippawas, Potowatomies, Sacks, and Foxes; and if the circumstances above mentioned give them a right to that country I can see nothing to prevent the Hurons, Episingles, Iroquois, Menomenies, and Sioux from hereafter exhibiting their claims by right of conquest, the latter tribe in particular having contributed more than any other to drive the Illinois Indians off their lands.

That part of their original possessions which lies between the Missouri and Mississippi rivers as high up as the mouth of River Des Moins has never been occupied by any Indian tribes since the Michigamias left it, which was before the Sacks and Foxes settled on the Ouisconsin. From the first settlement of this country the last-mentioned tract of land was used by the French inhabitants as a hunting ground until the repeated thefts and depredations upon their property by the Little Ozages, whose land was adjoining that tract, compelled those French hunters to abandon it.

474 The Sacks, Foxes, Towas, and some other Mississippi tribes have of late years been in the habit of hunting there, but that alone can not give them any right; for if it could, the French people having been the first occupants in that way, after the Michigamias the right would clearly rest in the United States by virtue of their purchase of this country.

Of all the nations residing on the upper parts of the Mississip'i and Missouri rivers, the Sioux are greatly the most numerous and powerful, in consequence of which they have a great ascendency over all the other tribes; and never fail to take advantage of and abuse their power, whenever temptation and opportunity present themselves.

This nation is divided into tribes consisting of the Tetons, Sesetons, Antowans, Sioux of the Leaf, Sioux of Bois Crule (or burnt wood), Yanctons, Sioux of the Lake, Sioux of the Prairies, and Moingonas.

Those tribes have no fixed villages, but lead a wandering life, and are sometimes travelling through their immense prairies, at other times on the banks of the Missouri, Mississip'i, St. Peters, and other rivers which flow through their extensive country, changing their position with the different seasons of the year, and as either their wants or inclination induce them to pursue the different kinds of game with which their country abounds.

Living under one general confederacy, free from all jealousies of each other, pursuing the same object and being identified in the same interest, these tribes have uniformly preserved a national character; in peace they live together in the utmost harmony and cordiality; in war they are always united against adversaries, the cause of one being always considered by them as the cause of all.

Their country is bounded as follows, to wit: Beginning at a point opposite the mouth of the Ouisconsin; thence southwestwardly to the dividing ridge that separates the waters of the Mississip'i and Missouri rivers; thence along said dividing ridge to the waters of the river Des Moins; thence southwardly to the Little Sioux River, and down the same to the Missouri, and thence up the latter river to a very distant point which can not be specified with entire accuracy; thence to the Mississip'i River supposed to be somewhere about Red Lake, which is much frequented by the Sioux of the Leaf, and thence down the Mississip'i to the beginning.

The Ozages consist of the tribes of Grand Ozages, Little Ozages, Kansez, Mahas, and Arkansas; the country of the Grand Ozages is included within the following boundaries: Beginning at the mouth of the Gasconade River, ninety miles above the confluence of the Missouri and Mississip'i; thence with the boundary line of the Illinois country as before

described to a point nearly opposite the head waters of Bonhomme Creek; thence southwestwardly to a certain place called the Quadrant on the Arkansas River; thence up the Arkansas River to a point a little below the Canadian (or Ne-bra-la Fork thereof); thence including all the waters of the Arkansas River to its source in the mountains which separate all the waters of the Mississip'i from those of Rio Nel Norte; thence pursuing the general range of those mountains so as to include all the several branches of the Arkansas; thence eastwardly to and with the dividing ridge that separates the waters of Arkansas and the Smoky Hill Fork of Kansez River; thence to the mouth of said fork; thence down the Kansez and Missouri rivers to the beginning. The village of the
475 Little Ozages was on the left bank of the Missouri about two hundred and forty miles from its mouth, and consequently was on the land that belonged to the Grand Ozages, who most probably granted the former tribe the privilege of settling there as a refuge against the attacks of their northern neighbors, but the country which they claimed and used as their only hunting ground is bounded as follows, to wit: Beginning on the Missouri, at the mouth of Grand River, eighteen miles below their village; thence down the Missouri to a point opposite to the Gasconade; thence northwardly to the dividing ridge that separates the waters of the Missouri and Mississip'i rivers; thence along said ridge to the head waters of the first branch of Grand River; then down said branch and Grand River to the beginning.

By the treaty concluded at Fort Clark on the 10th November, 1808, between the United States and those two tribes, the latter ceded to the former all their lands lying east of a south line drawn from Fort Clark to the Arkansas River, and north of the southwardly bank of the same river, and also all their lands situated northwardly of the river Missouri.

The country of the Kansez is included within the following boundaries, to wit: Beginning at a point opposite the mouth of Kansez River; thence northwardly to the dividing ridge that separates the waters of the Missouri and Mississippi rivers; thence along said ridge to the head waters of Ni-she-nan-batone; thence to and down said river to its confluence with the Missouri; thence down the latter about twenty-four miles to the mouth of Big Ni-ma-ha River; thence up said river to its source; thence southwestwardly about thirty miles to the Blue Water River; thence the same course to the Republican Fork of Kansez River; thence down the same to the beginning.

The country of the Mahas is very extensive, but I can not precisely describe its western limits; it, however, commences at the mouth of the river Platt and runs up the Missouri, the river Platt, and the Potatoe Fork of the latter river to a very considerable distance.

The country of the Arkansas was bounded as follows: Beginning on the Mississippi at the Ile aux Chicots; thence to the Quadrant (on Arkansas River); thence with the line of the Grand Ozages to White River; thence to the mouth of the St. Francis; thence across the Mississippi thirty miles and including that distance on the east side thereof to a point opposite the beginning.

The tribes of Missouri, Otos (or Otactatos), Towas, and Winnebagoes formed one nation under the name of Missouris. The Missouri tribe built a village on the left bank of the Missouri River, and occupied it

under the protection of Fort Orleans (built in 1723 by Mr. Bourgmont). But when the French evacuated that fort and erected another near the village of the Kansez, the Missouris crossed the Missouri River, and, with the consent of the Grand Ozages, built another village on their land, six miles above the village of the Little Ozages, where they afterwards resided. The country of the Missouris was bounded as follows, to wit: On the north by the dividing ridge that separates the waters of the Missouri and Mississippi river', east by the country of the Little Ozages, south by the Missouri River, and west by the country of the Kansez.

The country of the Otos is bounded as follows, to wit: Beginning at the mouth of the Nishinanbatone; thence binding on the line of the
476 Kansez to the dividing ridge that separates the waters of des Moins and Grand river', thence westwardly with said ridge about fifty miles, thence southwardly to the mouth of the river Platt, thence up said river about ninety miles, thence by a direct line to the sources of Big Ximahas, about one hundred and eighty miles, thence down said river to the Missouri and up the latter to the beginning.

The Towas formerly had their village on the right bank of the Missouri, about eighteen miles above the river Platt, on the lands of the Mahas. They, however, pretended to claim that small tract of land on which necessity had compelled them to settle, but their country was bounded on the north by the dividing ridge that separates the waters of the Grand and des Moins rivers, east by the Otos, south by the Missouri River, which separated them from the Mahas, and west by the Sioux, their most inveterate enemies.

Afraid to hunt on their own lands lest they might be attacked by the Sioux, and constantly threatened by the Mahas and Otos, who wished to drive them from the small tract of country on which they had established, they determined on a removal to the country of the river des Moins, which had long before been abandoned by the Moingonas, a band of Sioux who formerly inhabited it, and for that purpose, in 1765, they sent a deputation to Mr. de Laclede, of St. Louis, who then had the exclusive trade of the Missouri, requesting to know whether, in case of their removal, he would send traders among them in the new situation which they proposed to occupy. His answer being favorable, about one-half of the tribe moved in the same year to the country they had designated, being about hundred and fifty miles up the river des Moins, and Mr. de Laclede, according to promise, sent La Becasse and Boudria, two of his traders, to reside among them, with merchandize to supply their wants. The balance of the tribe all removed to the same place in the course of two or three years.

Soon after their removal the French traders, equally anxious to preserve peace between the tribes with whom they traded, as well to render their trade the more profitable as to guard against the danger of war parties, who seldom discriminated between friendly traders and the Indians with whom they were at war, used their utmost endeavours to effect a peace between the Towas and Sioux, in which, by the cooperation of some of the Mississippi tribes, they eventually succeeded.

Concerning the Winnebagoes, I am not sufficiently informed to give any particular account either of them or the time at which they separated from their nation or their actual country. The tribes of Pawnees, Pawnee Mahas, Pawnee Republick, Black Pawnees, and Ricaries constituted

one formidable nation. The country of the three first-mentioned tribes is bounded as follows, to wit: On the east by the Kansez and Otos, on the north by the Mahas, on the south by the Ozages, and extending westwardly so as to include all the waters of the Platt and Kansez rivers. The village of the Pawnees Mahas is situated on the south side of the Potatoe Fork, ninety miles above its confluence with river Platt.

As to the other two tribes, I do not with sufficient certainty know the extent and limits of the country which they occupy.

St. Louis, February 21st, 1816.

AUG'TE CHOUTEAU

477 BELLE FONTAINE, M. T., *31st January, 1818.*

SIR: I have the honor to inclose herewith a communication received from Major Long, topographical engineer. He has just returned from an examination of the Arkansas as high as the three forks and the country between that point and Red River. Supposing his communication may interesting and possible useful/ previous to the Government making any disposition of that section of country, I have taken the liberty to enclose it for yo'r examination. A sketch of the country may be expected by next mail.

I have the honor to be, sir, with high respt., your obt. sevt.,

T. A. SMITH,
Brevt. Capt. U. S. A.

Honble. SECRETARY OF WAR,
Washington City.

BELLE FONTAINE, M. T., *30th Jan'y, 1818.*

SIR: Agreeably to your instructions, I have the honor to lay before you a brief statement, grounded upon the best intelligence I have been able to obtain, relative to the country situated between the Arkansaw and Red river'; the claims of the Indians thereto, which has not been extinguished by cession to the United States, legally authorized and confirmed; the inhabitants thereof, who have emigrated from other parts of the United States, as also to the importance of this section of the United States' territory in a military point of view.

This tract of country, with the exception of a range of mountains and hills commencing at the Washitan and extending westwardly to the Canadian River, about fifty miles in breadth and one hundred and eighty in length, is furnished with a rich and luxuriant soil suited to the cultivation of all the necessaries and many of the luxuries of life, and particularly to that of cotton, and is supplied with numerous rivers and creeks well adapted for mill ruts and other water machinery, as also with springs of pure water, salines, and medicinal springs. The extent of this tract, exclusive of that part of the State of Louisiana situated north of Red River, is probably from one hundred to one hundred and fifty miles in width and about three hundred in length, reaching from the Mississippi to an imaginary line running due south from the forks of the Arkansaw to Red River. The Indian claims to the tract have never been extinguished in such a manner as to give the United States a fair and unequivocal title to it; nor have the conflicting claims of different tribes been amicably adjusted, either between themselves or between them and the United States.

The Cadoes, a tribe that has dwindled to a mere handful and resides at present on the south of Red River, inhabited a part of the country before the cession of Louisiana to the United States and still make some pretensions to it. They pretended to claim all the country beginning at the Mississippi and extending westwardly between the two rivers above mentioned to the northwest "as far as they could fight off the Osages" and to the southwest indefinitely.

478 The Quawpaws, a small tribe residing on the south of the Arkansaw, between 100 and 150 miles above its confluence with the Mississippi, at present able to furnish no more than sixty or seventy warriors, next laid claim to a portion of the country, which they have enlarged from time to time, at the investigation of the French and other whites, who have resided and intermarried with them, till at length they pretend to claim all the country under consideration. The Quawpaws are a branch of the Osage Nation, as is plainly evinced by the similitude of their language, shape, and features, to those of the Osages, and claim the country under the same tenure, the right of conquest and possession. Their original claim was limited as follows:

Beginning at the lower end of the village or post of Arkansaw, on the south of the river, and running up the river on the same side to Michael Bon's settlement, thence southwardly in the nearest direction to the main fork of the Saline of the Washitan, thence down said fork, Saline, and Washitan, to a point nearest to the place of beginning, and thence northwardly to the place of beginning; including a tract about forty miles in width and fifty in length.

The claim of the Osages to this country appears to have a better foundation, and can probably be more easily substantiated than that of any other tribe or nation of Indians, not only in consideration of their having been the original stalk whence the Quawpaws separated, but also of the great extent of country in this quarter, recognized by the United States as having belonged to them, and of their former ability to keep possession of it, by resisting the encroachments of their Indian neighbours. These people had acquired by conquest from other Indians a vast extent of territory, having enlarged their possessions, so as to include all the country from Red River to the De Moyen. The Cadoes were among the Indians whose hunting grounds were wrested from them by the Osages, and altho' they profess to be the grand original of all the aborigines, they have now no possessions that are not contested by other Indians.

By a treaty recently made with the Osages by Mr. Lovely, late Indian agent, who, it is believed, had received no special instructions for that purpose, the Osages ceeded to the United States all the country under consideration, together with a large tract on the north of the Arkansaw, situated between the Verdigris River and the boundary line already established between the United States and the Osages. It appears, however, that it was not the intention of the Osages to have ceeded to the United States so large a tract on the north of the Arkansaw as that specified in the treaty alluded to; as Clermont, the principal chief of that nation, severely reprimanded his interpreter after the treaty was made for having deceived him in council in regard to the extent and limits of the country of which they were then treating. He afterwards declared that the country which it was his intention, as well as that of the Indians,

to relinquish to the United States was to be separated from that which they would still retain by a line commencing at the falls of the Verdigris and running due east to Lewis and Clark's line, or the present Osage boundary, and by another line beginning at the same place and running due south as far as their possessions should extend, and that all
479 the country previously claimed by them to the south and east of these two lines was by the treaty ceded to the United States, with the exception of the point of land situated between the Verdigris and Six Bulls or Grand River, which should be called the beloved ground and be held in common between them and all other people as sacred to councils and all public proceedings in which their nation might be concerned. The Osages still consider the country above specified as the property of the United States, never having been informed that the treaty was not duly authorized and confirmed; and have repeatedly solicited the Americans to settle near them, alledging that they sold the land under the expectation that the Americans would become their neighbours and teach them how to cultivate the ground and their women how to spin and weave, and thus enable them to live when the woods could afford them no more game for their subsistence. Such having been their views in disposing of their lands to the United States, they are not a little disappointed and chagrined at the arrangement recently made with the Cherokees, their inveterate enemies, by which the latter are permitted to settle upon the lands formerly owned by them, and are by this means placed in a condition to annoy them exceedingly, which has been done of late on repeated occasions.

The Osages have frequently manifested a strong desire to change their mode of life and have uniformly entertained the highest regard for the character and improvements of the Americans. Their old men say that altho' there will be game enough to satisfy the wants of their nation during their lives, yet the rising generation must have recourse to other means for a livelihood. They are sensible of the advantages the Cherokees have derived from the partial change that has been effected in their mode of life, and are zealous to imitate their example and even exceed them in their progress of becoming civilized. Indeed, the Osages so far as I can judge from the acquaintance I have had with their character, both from observation and inquiry, are subjects more worthy of the consideration Government, in their humane exertions to civilize, and better calculated to be wrought upon by the means authorized for the reclaiming of savages, than any other nation or tribe of Indians residing upon the waters of the Mississippi.

Besides the Quawpaws there are various other Indians residing upon the south side of the Arkansaw, who have no claim to the country they inhabit; among them are a considerable village of Chocktaws, a large number of Cherokees, several Shawnees, and a few Delawares and Creeks.

The American settlements which have of late become considerably numerous, have been made by emigrants from various parts of the United States, but principally from Indiana, Kentucky, Tennessee, and the Illinois Territory. The number of inhabitants, agreeably to a census taken in the course of the last summer, amounted to nearly two thousand, since which the increase by emigration has been so great that the number at present does not fall much short of three thousand. These settlements

were made under the supposition that the land was the property of the United States, which has uniformly been the impression in that part of the country till the orders which have been recently issued for removing settlers from Indian lands were made known.

It appears to be the desire and intention of the settlers to acquire an honest livelihood from the cultivation of the soil. A large
480 proportion of them have expended all their property in moving in this wilderness country, and, in the event of their being compelled to remove from it in their present circumstances, must encounter privations and sufferings that they are ill calculated to endure. The term of their residence in the country has been so short that they have not yet been able to realize any profits from the cultivation of the ground, and the surplus produce in the hands of the oldest settlers more than their familys absolutely require for their support, when equally distributed amongst those who have not been in the country long enough to raise a crop, would afford to each but a very scanty pittance. Such is the scarcity of provisions necessary for subsistence and the inability of the people to purchase more, that they will be under the necessity of procuring game for their subsistence, which has already become so scarce that it will be difficult to obtain a competent supply.

In a military point of view the objects that present themselves are: Firstly, to keep peace between the Cherokees and the Osages; secondly, to prevent the whites from hunting and committing other trespasses upon Indian lands, and thereby to secure our frontier settlements in this quarter from the depredations of the Indians.

The first of these objects will no doubt receive due attention from the United States Government, as they were instrumental in locating the Cherokees in the neighborhood of the Osages, and the two latter will probably be deemed of equal importance, as everything depends upon their accomplishment in securing and maintaining a friendly understanding with the Indians.

To effect these objects in part the detachments of the United States troops, under the command of Maj. William Bradford, has already been ordered into this part of the country and are now erecting works on the south side of the Arkansaw about twenty miles above the Osage line before mentioned or nearly five hundred above the mouth of that river. For a general character of the position they have occupied I beg leave to refer to my report dated Camp Smith, Belle Point, December 3rd, 1817.

By maintaining a garrison at this place those objects are easily attainable so far as it relates to occurrences that transpire through the medium of water communication by way of the Arkansaw. Transactions that take place remote from the Arkansaw will require military operations on a more extensive scale to hold them under due restraint. This can be accomplished only by a chain of military posts, connected by wads and of so formidable a character as to impose a dread upon the savages and enforce due respect to the laws of the land from outlaws and malefactors, more or less of whom are generally to be found in frontier settlements. Such a chain of works, however, can not easily be formed so as to cut the Arkansaw very low down on account of the uneven and broken surface of the country over which it must pass on both sides of that river. Between five and six hundred miles up this river (pursuing its courses)

the country becomes less hilly and broken till at length it subsides into a rolling country, abounding in extensive champaigns, and is said to be of this character from the Red to the Missouri River. Of course facilities are here presented for opening a line of communication along our western frontier which would give the military operations in that quarter a degree of efficiency not attainable in any other way.

481 Under this view of the subject may be considered also the advantages resulting from a settlement of the country between the State of Louisiana and the Arkansaw River, a country better calculated to admit of a numerous population than any other of equal extent on the west side of the Mississippi between the Missouri River and the State of Louisiana. By settling this country the chain of settlements on the west side of the Mississippi would be complete from New Orleans to St. Louis and supplies of every kind necessary for the subsistence of an army, should any future emergency require the presence of one to protect the western frontiers at any point, may be drawn from resources near at hand.

I would therefore suggest the propriety of communicating to the proper authorities any intelligence bearing upon this subject, and at the same time, as a step leading to the accomplishment of the objects above specified, as also to the relief of the numerous settlers in the Arkansaw and Red River country, would recommend the extinguishment of claims of the Osages, Quawpaws, and other Indians, should there be any whose claims ought to be recognized, to all or most of the land to the south and east of the two lines above specified. Also that the United States should have the privilege of improving a valuable salt spring on the Six Bulls or Grand River, about sixty miles above its mouth, should they not be able to purchase of the Osages the tract including it. And that the United States should have the privilege of opening communication, either by land or water or both, from Red River across the Arkansaw to the Missouri in any directions they may deem proper.

In the foregoing observations I may have touched upon subjects not immediately connected with my duties as a military officer, yet I have taken the liberty to communicate thus freely, under the impression that the whole was of sufficient public interest to invite some degree of consideration.

I shall endeavor to furnish a sketch of the country concerning which the foregoing statement has been made by the earliest opportunity.

I have the honor to be, sir, very respectfully, your most obt. and very humble servt.,

S. H. LONG, *Maj. T. Engineers.*

Brig'r Genl. THOS. A. SMITH.

E.

CHOCTAW AGENCY, *March 6, 1835.*

ELBERT HERRING, Esq.,
Comr. of Ind. Affairs.

SIR: It affords me pleasure to be able to state to the Department, upon information not to be doubted, that the wild tribes who sent in delegates with Col. Dodge last summer and with whom we held a council at Fort Gibson are so friendly disposed.

The firm of Coffee, Calville & Co., merchants from the Arkansas Territory, determined, if possible, to open a trade high upon Red River with these people. This company, consisting of about forty persons, took up their march about the first of August last, from Fort Smith. After proceeding to the Canadian River they made a halt until the result of the council alluded to should be known. The effects of the friendly relations established at the council between the wild tribes, the whites, and the eastern emigrant tribes, together with the Osages, has been such that the firm felt safe in making a location for the purpose of trade, at the old Pawnee village on the Red River, about 20 miles above the Cross-Timbers, and 100 miles below the Pawnee village visited by Col. Dodge. The trading house established is about 75 miles on a direct line above the mouth of the False Washitam. Mr. Calville, with whom I am now conversing, is a man of character, and whose statement may be relied on. He says that the Kiaways, Towa-ash, and Comanche tribes are delighted with their visit to Fort Gibson, and that he has seen the flag and medals given them at Gibson. He states that he has talked with the great Comanche chief who says that he is the chief and great captain of all these tribes, and that he asked a great many questions about the Big White Captain and says he must see him (meaning the President); that he wanted to talk to him. All these tribes are looking anxiously for the meeting spoken of, and recommended by Col. Dodge and myself; they say that then the great peace will be made, and that they will visit their white and red brothers, and go and see the Great White Captain. These tribes are now carrying on a war against the Mexicans on the frontiers of Chewawa and at the Pass. They have brought into their villages two prisoners (Spaniards and Mexicans). The firm, Mr. Calville says, have bought one of the prisoners, a boy 12 years old, taken not far from Chewawa; the other the firm expects to buy from the Kiaways, who have promised to sell him. Mr. Calville states that they have been treated kindly, and they attribute it in a great degree to the effects of the campaign and to Col. Dodge's course while with them, together with the very satisfactory meeting at Gibson, of which they speak with interest and delight.

I have also information direct from the Pawnees and Comanches, brought me by an individual who went from near Fort Gibson last fall very soon after the wild Indians left Fort Gibson. This man, Mr. Pennington, can be depended on, and his statement corresponds with that of Mr. Callvil's. Mr. Pennington was in the villages higher up the country; he speaks of the expected meeting already alluded to. Both of these gentlemen anticipate important results, which must, from every appearance, grow out of the contemplated assemblage of Indians for that purpose at some suitable point on the frontier.

I have the honor to be, your obt. sevt.,

F. W. ARMSTRONG, *A. S. W. T.*

NOTE.—The Indians say that it takes them sixty sleeps to travel in their way to Chihuahua, or as I have written in the communication, Chewawa.

F. W. A.

483 CHOCTAW AGENCY, *June 18, 1835.*

ELBERT HERRING, Esq.,
Commr. of Ind. Affairs.

SIR: In taking a prospective view of the contemplated meeting to take place between the commissioners and the wild tribes, in conformity with instructions from the department, I have reflected much on the general policy heretofore pursued by the Government in establishing peace and friendship with such Indians as are willing to have intercourse with our people under stipulations for that purpose.

The policy has always been to take a few of the leading men belonging to each nation and travel them to the city of Washington for the purpose of letting them see what can not be made known to them by any other mode. It is in vain to say to them that they are not as great as any nation and, indeed, equally as powerful. The Comanches in particular have those great conceptions of their own power. The Comanchee chief now says to our traders that he is the great chief of all these red people within the western territory, known as the wild Indians, and he says he wishes to see his great father, the President. The good effect growing out of what a delegation would certainly see on a visit of this kind can not be doubted. The correctness of this course seems to be acknowledged in this country by everyone, and is believed more important than any meeting. My situation requires that I should know the wishes and the policy of the department connected with the Indians in this region, therefor I have felt it my duty to make this communication, so that when the commissioners meet these people no step will be taken that is not in conformity with the views of the Government. Should an intimation of the wishes of the department be given me by an early reply to this, it will be in my power to make the suggestion in time to the commissioners, so that whatever is desired may be done. Before, however, closing this letter, it is right that I should give my own opinion because I have taken pains to know from various sources the views of these wild people. I am, therefore, decidedly in favor of having at least one or two of the principal men of each nation taken to Washington for the object stated. The good effects of the policy has never heretofore been doubted, and certainly it has never been more important.

I have the honor to be, your obt. sevt.,

F. W. ARMSTRONG, *A. S. W. T.*

HEADQUARTERS SOUTHWESTERN FRONTIER,
Fort Gibson, April 15th, 1835.

SIR: I have the honor to report that two Pawnee Picks and one Wahoe have arrived at this post, with the object, as it is believed, of ascertaining the time and place of holding a general meeting between their tribes and the different Indian nations on this frontier, as (it is understood) was promised them last fall by Col. Dodge. They are without an interpreter and I will therefore send to the Osages for one to-day, and at the
484 same time notify Maj. Armstrong of the measures I have taken,

that he may have an opportunity to confer with our visitors from the western prairies should he desire to do so.

I am, sir, very respectfully, your obdt. servt.,

M. ARBUCKLE,
Brigd. Genl. U. S. Army, Commd.

To Brigd. Gen. R. JONES,
Adjt. Genl., Washington City.

FORT GIBSON, *Jy 14th, 1835.*

The Hon. LEWIS CASS, *Secretary of War.*

SIR: In pursuance of your instructions, accompanying our appointment, we have made every exertion in our power to bring the Comanches, Caiaways, and other western tribes to Fort Gibson, as the most suitable place for holding the proposed treaty of pacification. We had sent out different parties and offered every inducement which our limited means would justify to obtain this object. Our last letters from Major Mason compel us to abandon all hopes of bringing in the great western tribes to this place. They alledge that Colonel Dodge promised that Commissioners of the United States should meet them, for the purpose of treating, on the great western prairie, and upon this promise they rely. We have accordingly made arrangements for holding the treaty on the 20th day of August, at Major Mason's camp, between Little River and the Canadian River. We shall take care to apprise you of whatever may be done in the progress of this business.

Considering the proposed treaty of pacification, as the Government seems to consider it, as of great importance to the Indians, as well as to the United States as their guardians and protectors; considering the vast number of Indians whose interests are intended to be promoted by this treaty, we can not but lament that the sum of money appropriated to this great object is far short of what might have been reasonably expected, and very far short of what might have been advantageously expended in furthering this great object.

As we are to meet a great number of Indians, we must take our presents with us, whether we make a treaty or not. For if we should make a treaty it would not be proper to detain several thousand Indians until the presents were sent for. We shall therefore make the best calculation we can of the unavoidable expenditures at this place and at the treaty ground, and shall take the amount of the balance with us in presents.

With much respect we are, sir, your obt. sevts.,

M. STOKES.
M. ARBUCKLE.

FORT GIBSON, *Sept. 15th, 1835.*

The Hon. LEWIS CASS, *Secretary of War.*

SIR: We have the honor to inform you that we have just returned from Camp Holmes, the place appointed for meeting the Comanche, Kioway, and Witcheta nations, and their subordinate bands.

485 We were deprived of the services and assistance of Major F. W. Armstrong, one of the commissioners, who died about the time we set out on the expedition.

Agreeably to your instructions, we desired to have the treaty with the western prairie Indians at this place, and we used all the means in our power to bring them in, but it was impossible. They insisted on the fulfillment of the promise made them by Col. Dodge to meet them on the border of the great western prairie, which is their hunting ground, and nothing could induce them to meet us at Fort Gibson. These people know that they have committed many murders, robberies, and other depredations upon the citizens of the United States and upon friendly Indians, and they are naturally suspicious, timid, and treacherous, and were unwilling to undergo so long a journey and place themselves in our power. We have reason to believe that we have, in a great measure, quieted these feelings of apprehension and distrust.

By appointment, through the means of Major Mason, we met the principal chiefs of the Comanche and Witcheta nations on the 20th day of August, and on the 24th day of the same month we were fortunate enough to conclude a treaty of peace and friendship with these chiefs, in which treaty is included all the friendly nations whose deputations had accompanied us. We have the honor to enclose herewith a copy of the treaty, the terms of which we hope will be satisfactory to the President of the United States.

As some confusion has existed, both here and elsewhere, with respect to the names of the nations of the great western prairie who reside or hunt to the west and southwest of this post, we deem it proper to inform you that there are but three distinct nations of these Indians, with the exception of one or two small tribes who reside far south of Red River, in the province of Texas. These three nations are the Comanches, who are the most numerous, but who have no fixed or permanent villages and follow the herds of buffaloe with their movable lodges, and are sometimes north and at other times south of Red River. The Witchetas consist of several bands, some residing north and some south of Red River. Those residing north of Red River are the Towesash and Wachos. They have fixed villages and raise some corn and vegetables. The Kioways have no fixed villages, but wander from the cross timber on the Arkansas, Canadian, and Red River to the Rocky Mountains, and are sometimes, but not often, south of Red River. We are sorry to inform you that from some cause, which we are not now able to explain, the Kioways did not meet us at the treaty. They were in considerable numbers a short distance from the treaty ground but a little time previous to our meeting, and left the place to go on their hunt. We had suspected a band of Osages as being the cause of alarming the Kioways and occasioning their going away without attending the treaty, but after investigating the affair as well as we could, we were not able to fix the charge unequivocally on this band, and we have therefore given them an opportunity of wiping off this charge by bringing in the chiefs of the Kioways to Fort Gibson, which they have promised to do. We are not without reasonable expectations that the chiefs of the Kioways will come in to Fort Gibson. We sent them a copy of the

486 treaty from the treaty ground and informed them that we had brought back the portion of presents intended for them, which should be bestowed upon them as soon as they came in and signed a similar treaty.

It is with pleasure we acknowledge the friendly services of Tally, Black Dog, and Wash-am-pe-che, and their Band of Osages, who assisted us all in their power, in allaying the fears of the Comanches and Witchetas, and inducing them to place confidence in the Government of the United States. Some of the Osages had accompanied Major Mason and remained with him until the treaty was made; and they had rendered him considerable service in procuring fresh game for the troops. We of course rewarded them for their fidelity by some small presents, which they well deserved. These presents were taken from those reserved for the Kioways; and should these last-named Indians come in and sign the treaty, perhaps a few hundred dollars may be necessary to make up the deficiency.

After the conclusion of the treaty the chiefs of the Comanches and Wichetas expressed a desire to visit the President of the United States, under a proper conductor; and to have Black Dog, of the Osage Nation as their companion. We think such a visit would be useful; and that Black Dog, who has proved himself to be a friend to the United States, might be permitted to accompany them.

We have only to add at present that the original treaty will be forwarded to Washington, by a safe conveyance in time to be submitted to Congress at their next session, should the President of the United States consider it proper.

We are, with great respect, your obdt. servants,

MONTFORT STOKES.
M. ARBUCKLE.

FORT GIBSON, *26 Sept., 1835.*

The Honbl. LEWIS CASS,
Secretary of War.

SIR: We had the honor of transmitting to you by the two last mails a copy of the treaty with the Comanchee, Witchata and other Indian tribes; and also an amount of the expenditures and disbursements in holding the said treaty.

We have now the honor to send herewith, by the hands of Lieut. Seawell, the original treaty above mentioned.

It is probable that we might have had other opportunities of forwarding the treaty to Washington in time to be laid before Congress at their next session; but Lieut. Seawell's family are at Washington, and he has expressed a desire to go there for them; and being a confidential officer of the Government and of the commissioners. General Arbuckle, with the approbation of Gov. Stokes, has consented that Lieut. Seawell shall take on the treaty; for which service the Government may make him such allowance as they may judge proper. We have made no agreement or promise to Lieut. Seawell on this subject.

Lieut. Seawell also takes on to the War Department a transcript of all our proceedings in regard to the treaty. Owing to the continued
487 rains and bad weather that prevailed during our conferences with the Indians and the small supply of provision on hand, our talks and consultations with the chiefs of the different tribes were necessarily short; but we trust that we have omitted nothing that was essential to the

interest of the Government of the United States or conducive to the harmony of the nations for whose benefit the treaty was made.

We have the honor to be sir, with the highest respect, your obt. servant,

M. STOKES.
M. ARBUCKLE.

FORT GIBSON, *May 5th, 1835.*

The Hon. LEWIS CASS,
Secretary of War.

SIR: We have had the honor of receiving your letter and instructions of the 27th March; and as the mail returns immediately, we can only now say that every means shall be used to have a meeting of deputations from the Comanches, Kioways, and other prairie Indians with those on this frontier as early as possible. We consider it a fortunate circumstance that there is now in this vicinity two men of the Towa-ash and one of the Wacho tribe, who are subordinate bands of the Comanches; and by them was proposed to send a message inviting their chiefs and those of the Comanches, Kioway, and other bands, to meet us in all the month of June.

We expect to see Maj. Armstrong in a few days, when immediate measures will be taken to assemble the principal men of the different nations who are interested in the proposed treaty.

We are with great respect, your obedt. servants,

M. STOKES.
M. ARBUCKLE.

FORT GIBSON, *May 14th, 1835.*

The Hon. LEWIS CASS,
Secretary of War.

SIR: We have had a full meeting of the board of commissioners, and have been two days in consultation with the three western prairie Indians mentioned in our letter to you of the 5th instant. They declare positively that it will be impossible to procure even an interview with the Comanche and other chiefs of their tribes until late in July. That a war party has gone over the Mexican line for the purposes expressed in Maj. Armstrong's letter to you; and that the remaining bands are hunting in the great prairie; and that neither party will return until the green corn raised by the subordinate bands is eatable. That annually these wandering bands visit the Pawnee villages for the purpose of procuring corn. This information is corroborated by the statement made last summer by Col. Dodge.

We made every effort in our power in endeavoring to have the treaty at in conformity with the views of the Government, and shall not aban-
don these efforts as long as there may remain a probability of
488 accomplishing the object; but Col. Dodge promised them last
year that commissioners of the Government would meet them on the Western prairie, and those Indians inform us that the chiefs of the Western tribes confidently expect the fulfilment of that promise. We have, therefore, concluded that Maj. Mason, with a party of dragoons shall leave this place immediately for the purpose of establishing a camp

near the head of Little River, a north branch of the Canadian, as a suitable place for meeting the Western chiefs, provided they cannot be got here; but we shall still continue our efforts to bring them to Fort Gibson, if possible. For this purpose the three Western Indians will accompany Maj. Mason, and we have procured and will also send an interpreter with two or three Osage guides well acquainted with the country and the best way to it. As soon as an interview can be had with the Comanche and other chiefs, Maj. Mason will inform us whether they will come here to treat, and will conduct them in. If they will not come we shall be compelled to meet them at the place selected in the West, and he will inform us of the time so as to enable us to assemble a portion of the tribes who are to accompany us.

As our instructions direct us to endeavor to make a permanent peace, not only between the United States and Comanche tribes, but also between them and the Indian nations near them and liable to suffer from their depredations, which includes the Choctaws, Creeks, Cherokees, Osages, Senecas, and Quapaws; and as we must have a portion of all these nations with us, we would respectfully suggest that ample provision should be made for their support without touching the appropriation, for if any considerable part of these expenses is to be taken from the amount placed at the disposition of the commissioners there will be little left for presents, and consequently the promises of the Government will not be fulfilled and the Indians be disappointed and dissatisfied.

The commissioners have consulted with Genl. Arbuckle, and find there is at this and other convenient posts a considerable supply of old flour and pork which if not consumed in this way will be nearly a total loss. The surplus provisions here alluded to the commissioners believe may be properly issued to the Indians making the treaty without being paid out of the fund appropriated.

We are, with great respect, your obdt. servants,

M. STOKES.
M. ARBUCKLE.
F. W. ARMSTRONG.

FORT GIBSON, *May 4th, 1835.*

Received the commission of appointment and letter of instructions from the Secretary of War, dated March 27th, 1835, directed to Hon. M. Stokes, Bvt. Brig. Genl. M. Arbuckle, Maj. F. W. Armstrong.

FORT GIBSON, *May 5th, 1835.*

The board met and entered on business.

Present, M. Stokes, M. Arbuckle, commissioners.

Wrote a letter to the Secretary of War acknowledging the receipt of the commission and instructions.

489 FORT GIBSON, *May 6th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

Wrote a letter and sent by express to Maj. F. W. Armstrong, at Choctaw Agency, notifying him of the appointment and requesting his attendance at Fort Gibson as soon as convenient.

FORT GIBSON, *May 7th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

Appointed Col. A. A. Chouteau interpreter of the Osage language and sent an express with a request that he bring in from Clermonts Town the two Towee-Ash and one Wacho Indians, together with the Towee-Ash woman to be used as an interpreter.

FORT GIBSON, *May 10th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

Col. Chouteau arrived with the three Indians from the Towee-Ash and Wacho villages and the Towee-Ash woman.

FORT GIBSON, *May 11th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

Held a talk with the three Western Indians on the subject of the proposed treaty with the Comanchee and other tribes. The Osage second chiefs Black Dog and Tally were present.

FORT GIBSON, *May 12th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

Held a council with the three Western Indians in presence of Black Dog, Tally, and others of the Osage Nation.

Explained to the Indians the views of the Government of the United States in proposing a treaty with the Comanche and other wandering nations and tribes on the Western frontier.

FORT GIBSON, *May 13th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, F. W. Armstrong.

Held a further council with the three Western Indians in presence of and assisted by Black Dog, Tally, and other Osages.

FORT GIBSON, *May 14th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, F. W. Armstrong.

Held a further council with the three Western Indians and the principal Indians present of the Osages. Considered it proper that Maj. Mason, with a party of dragoons, should proceed to the head of Little River of the Canadian and select a suitable place for having an interview with the chiefs of the Comanches and other tribes of the Western frontier.

Determined to send the three Western Indians, Col. Chouteau, the
490 Towee-Ash woman, and three Osage Indians, with Maj. Mason.

Engaged Tally for this purpose. Engaged the three Towee-Ash and Wacho Indians to assist in bringing in the chiefs of the Comanche tribes to Fort Gibson for the purpose of making the proposed treaty.

Wrote a letter to the Secretary of War, informing him of these arrangements.

FORT GIBSON, *May 15th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, F. W. Armstrong.
Held a further council with the three western Indians and a number of the Osages. Obtained the promise of Black Dog and the Osages to refrain from any hostile acts towards the Comanches and other wandering western tribes.

FORT GIBSON, *May 16th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle.
Made arrangements for the departure of the western Indians, with the Towee-ash woman, purchased and gave them some small presents. Purchased a horse at the price of sixty-five dollars, for the Towee-ash woman to ride to the west, and to carry her child. Purchased stationery for the use of the commissioners. The name of the principal Towee-ash Indian is Nuck. The names of his two companions are Tanacaqueril and Chotalaces. The name of the Towee-ash woman employed as an interpreter is Asscinka.

FORT GIBSON, *Monday, May 18th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle.
This day Col. A. A. Chouteau, our Osage interpreter, arrived from his residence near the great Saline, in order to accompany the expedition to the west, under Maj. Mason.
The commissioners were this day employed in fitting out the western expedition. Purchased a horse at the price of thirty-five dollars for Nuck, the principal Towee-ash Indian, he having lost his own. Gave the three Towee-ash and Wacho Indians, and the Towee-ash woman employed as interpreter some presents, consisting of blankets, hats.

FORT GIBSON, *Tuesday, May 19th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle.
The board were engaged in completing the preparations, and preparing instructions for Col. Chouteau for the western expedition. Had a consultation with a Mr. Pennington, residing in the Creek Nation, relative to a war party of Texas Indians fitting out by the Texas Government against the Comanches and their subordinate bands. Genl. Arbuckle made arrangements with Col. Money, commandant at Fort Jessup, near Nacogdoches, and with Maj. Mason, commanding the western expedition, in order, if possible, to counteract and prevent any mischievous consequences to our trading house and to the Comanches from this war party of Texas Indians. This day dispatched Tally and the other Osage guides across the Arkansas River with a small outfit of powder and lead, and four rifles for the purpose of killing game for the party.

491 FORT GIBSON, *May 20th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle.
This day dispatched Col. Chouteau with Nuck, the principal Towee-ash and his two companions, with the Towee-ash woman Asceinka, who

crossed the Arkansas River and joined Maj. Mason on the western expedition.

FORT GIBSON, *May 20th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

Held a consultation with Clermont, principal chief of the Osage Nation, and twenty-five of his band on the subject of the proposed treaty with the Comanches, but having no interpreter the talk was not satisfactory.

FORT GIBSON, *May 21th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

Procured the assistance of Antoine Lombard as an interpreter and had a further consultation with Clermont, La Fou, and other chiefs and warriors of the Osages. They promised to attend the proposed treaty with the Comanches and designated the hunting ground of each band of the Osages, where they may be found until their summer hunt is over, which will be about the last of July. They earnestly begged for presents for their hunting outfit, but our means for presents and for the expenses of the treaty being extremely limited we only gave them a small quantity of tobacco to conciliate their good feelings towards the accomplishment of the views of the Government in the proposed treaty. Several of the warriors expressed a perfect indifference as to the success of the treaty, alledging that the plunder of Comanche horses and the unrestrained hunting of game on the prairie was more profitable to them than anything they received from the Government of the United States for acceeding to or aiding in a treaty of peace. These speeches of the Osage chiefs and warriors, as well as those of the commissioners, would have been recorded, but the commissioners have no secretary, and, from the circumscribed regulations of the Secretary of War, it is not probable a secretary can be procured on the terms prescribed in the instructions. The records of the proceedings of the board are kept by the voluntary labour of one of the commissioners.

FORT GIBSON, *May 31st, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle.

This meeting of the board was at the request of Black Dog, an Osage warrior, and his party. They stated that they were desirous to meet the commissioners at the treaty to be held with the Comanches and other western tribes, but that themselves and their families were now suffering for want of provisions, and that that intention was to go immediately on their buffalo hunt in the western prairie, and from thence to the treaty when the time should be fixed. They stated that they were in absolute need of powder and lead for their hunt, but were unable to procure it, and intreated the commissioners to assist them. The com-
492 missioners taking into consideration the starving condition of this tribe furnished Black Dog and his band one keg of powder and fifty pounds of lead.

FORT GIBSON, *June 10th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle.
The commissioners having purchased sundry articles for the outfit and accommodation of the party, the guides and interpreters sent out with Maj. Mason's detachment for the purpose of inviting the Comanches and other Western tribes to a treaty; and the commissioners having occasion for other and further supplies, they drew a check on the Union Bank of Louisiana for five hundred dollars in favor of E. W. B. Nowland, who furnished the supplies aforesaid and engaged to furnish such others as may be required.

FORT GIBSON, *July 8th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners.
Two Osages arrived at this post on the 6th instant on express from Maj. Mason's camp. The commissioners agreed to purchase and give them some presents for their services, which they had been promised by Maj. Mason.

FORT GIBSON, *July 11th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners.
An Osage arrived this day on express from Major Mason's camp. The commissioners agreed to purchase and give him a few presents, which Major Mason had promised he should receive for his services. The board appointed the 20th of August for holding the treaty with the Western Indians, at Camp Holmes, near western border of the Cross Timbers, in the Creek Nation, and requested Gen'l Arbuckle to direct Major Mason to notify the Prairie Indians to attend there at that time.

FORT GIBSON, *July 17th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners.
The commissioners being without a secretary, they addressed a letter to Lieut. W. Seawell, appointing him to that office.

FORT GIBSON, *July 19th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.
Gen'l Arbuckle reported to the board that he had just received a letter from Major Mason informing him that one of the principal and most of the influential chiefs of the Comanches had not yet arrived at his camp, but was expected in a few days. The board considered it proper that Major Mason should be immediately directed to endeavor to prevail upon this Comanche chief, as soon as he arrives at his camp, to bring in the principal chiefs and headmen of his nation, and also deputations from the different Western nations or tribes to this post for the purpose of holding a treaty.

FORT GIBSON, *July 23d, 1835.*

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The board met.
Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.
A party of Comanches, consisting of eight men and seven women, having arrived at this post last evening, the board agreed to purchase

and present to them some pipes and tobacco. There is one principal chief among them.

FORT GIBSON, *July 24th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

This meeting of the board was for the purpose of holding a talk with the Comanches who arrived on the evening of the 22nd. The Comanches wished to know when the commissioners intended to meet the Western Indians for the purpose of treating. They begged for presents. The commissioners told them that the presents intended for their people would be taken to the treaty ground, and that after the treaty they would receive their share and not before, and that the treaty would take place at Camp Holmes on the 20th of August. The Comanches replied that if they waited until that time they would not receive any of the presents, and earnestly begged that their share should be now given them. The commissioners agreed to make them a small present, and purchased and presented to each a shirt, a handkerchief, and some tobacco, and told them they would receive more after the treaty.

FORT GIBSON, *July 29th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board met for the purpose of commencing the purchase of presents for the Prairie Indians. They considered it best to await the arrival of Major Armstrong, one of the commissioners, who was hourly expected.

FORT GIBSON, *July 30th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board decided to receive proposals for furnishing the presents for the Prairie Indians, and directed the secretary to advertise for them until 1 o'clock p. m. of the 1st of next month. Employed Sergeant Dannenburg of the 7th Infl. to proceed to Washington County (A. T.) to hire waggons and teams to take the presents to the treaty ground.

FORT GIBSON, *July 31st, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board were engaged in ascertaining the amount to be expended in presents for the Prairie Indians. Paid Francis Beatte thirty-three dollars for his services as guide to Captain Lee's command.

494 FORT GIBSON, *August 1st, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board were this day engaged in receiving and opening bids for furnishing presents for Indians and examining the samples furnished. Bids for furnishing some of the presents were accepted.

FORT GIBSON, *August 2nd, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board were employed in purchasing presents to take to the treaty ground, and employed Serjeant Stoutenburg, at fifteen dollars per month, to attend to the receiving and safe-keeping of them. They received a letter from Major Armstrong, accompanied by his attending physician's certificate, stating that on account of his ill health his life would be endangered if he accompanied them to the treaty ground.

FORT GIBSON, *August 3rd, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board were employed in purchasing presents to take to the treaty grounds. They addressed a letter to the Secretary of War, informing him of the progress they were making, and also the indisposition of Major Armstrong, which would prevent his attending the treaty. They also replied to Major Armstrong's letter, which they received yesterday. Purchased of S. Hill Indian presents amounting to thirteen hundred and ninety-one dollars, and paid Serjeant Dannenburg three dollars for expenses incurred by him in employing waggons to take Indian presents to the treaty ground.

FORT GIBSON, *August 4th, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board directed the secretary to write a letter to Major Chouteau requesting him to notify the different Osage bands, in case they should have returned to their towns, that deputations from them were expected to attend the proposed treaty at Camp Holmes on the 20th instant; and also not to pay out the annuity to the Osages until after the treaty, and to tell them so.

FORT GIBSON, *August 5th, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The commissioners this day gave three checks on the Union Bank of Louisiana, amounting in all to six thousand three hundred and eight dollars and sixty-nine cents: One in favor of E. W. B. Nowland
495 for one thousand six hundred and sixty-seven dollars sixty-nine cents; one in favor of W. P. Tilton for three thousand and eighty-one dollars and ninety-four cents; and one in favor of Thomas E. Wilson for one thousand five hundred and fifty-eight dollars and thirty-nine cents. These checks were given to pay off the amounts, &c., against the commissioners for purchases of presents, &c.

PORT GIBSON, *August 6th, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board agreed on leaving Fort Gibson this day for the treaty ground at Camp Holmes.

CAMP HOLMES, *August 19th, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The commissioners reached Camp Holmes this day and assembled the Comanche and Witchita chiefs. They asked them where the principal Kioway chiefs were, and if they could not be had here in ten days. They replied that the Kioway chiefs could not be got here in ten days, and that it was impossible to say when they could be got here; that they were like wolves, so difficult were they to be found. The commissioners asked them if any more of the chiefs and principal men of their nations were expected. They replied no; they will not come here; they were here and staid a long time, but their children were starving, and they have gone for good and will not return. The commissioners asked them if they were fully empowered to treat with the United States, and in case of making a treaty, if all their people would consider themselves bound to observe it? They replied yes; we were left here for the purpose of making a treaty of peace; our nations wished to be at peace with every person. When we were left here our people told us not to leave before you arrived; that they wanted to make a treaty, and that they would all observe it. The Kioways will also agree to any treaty we may make.

CAMP HOLMES, *August 21st, 1835.*

The board met.

Present: M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The board having this day assembled in council the chiefs, warriors, and representatives of the Comanche and Witchita nations and their associated bands or tribes of Indians, and having introduced them to the chiefs and representatives of the Cherokee, Muscogee, Choctaw, Osage, Senecas, and Quapaw nations or tribes of Indians, who were also assembled in council, the following speeches were made by the commissioners and interpreted to the Comanche and Witchita nations. All the speeches, both of the commissioners and the Indian chiefs, are omitted, having been once furnished to the War Department in the communication accompanying the treaty. The treaty made with the Comanches and Witchitas is also omitted in this journal, having been forwarded to the Government and ratified by the Senate. The commissioners did not meet yesterday, in consequence of bad weather.

496 CAMP HOLMES, *August 23rd, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The commissioners drew a check on the Union Bank of Louisiana in favor of Thomas B. Ballard for four hundred and twenty dollars, being

amount due him in full for the hire of his waggons and teams, ployed in transporting Indian presents from Fort Gibson to Camp lmes.

CAMP HOLMES, *August 24th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secre-y.
The board was this day occupied in obtaining the signatures of the efs and representatives of the Comanche, Witchita, Cherokee, Mus-gee, Choctaw, Osage, Seneca, and Quapaw nations or tribes of Indians.

CAMP HOLMES, *August 25th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secre-ry.
This day was spent in making speeches and exchanging friendly tokens tween all the chiefs and head men of the eight nations assembled.

CAMP HOLMES, *August 26th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secre-ry.
The commissioners were this day employed in distributing of presents the Comanche and Witchita Indians.

CAMP HOLMES, *August 27th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secre-ary.
The commissioners agreed to leave Camp Holmes this afternoon for Fort Gibson. They settled with Ascinka for the sum of one hundred nd nineteen dollars, being the amount due her for her services as inter-preter of the Comanche and Witchita languages. Ascinka having received horse on the 16th of May from the commissioners, for which sixty-five dollars was paid; the balance of her amount, amounting to fifty-four dollars, was paid her in goods.

FORT GIBSON, *September 13th, 1835.*

The board met.
Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secre-tary.
The commissioners drew a check on the Union Bank of Louisiana in favor of Thomas B. Ballard for four hundred and eighty-six dollars. This includes the one given Mr. Ballard at Camp Holmes on the 23rd of August for four hundred and twenty dollars, which he returned to
497 the commissioners and was destroyed, and also his account against the commissioners for the hire of his waggons and teams employed in transporting presents from Camp Holmes to Fort Gibson, and for services rendered by him.

FORT GIBSON, *September 15th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The commissioners wrote a letter to the Secretary of War informing him of their return to Fort Gibson from Camp Holmes, and enclosed him a copy of the treaty which they concluded with the Comanche and Witchita Indians at Camp Holmes an the 24th of August.

FORT GIBSON, *September 20th, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

This meeting of the board was for the purpose of settling with Col. A. A. Chouteau on account of his services as interpreter of the Osage language, amounting to four hundred and eleven dollars; and also with Serjeant Stoutenburgh for services rendered by him in receiving and taking care of Indian presents, amounting to twenty-one dollars. Both of these accounts were paid, and the commissioners drew a check on the Union Bank of Louisiana in favor of Thomas E. Wilson for four hundred and thirty-eight dollars and twenty-five cents for that purpose and also for the purpose of paying Thomas E. Wilson's account against the commissioners for six dollars and twenty-five cents.

FORT GIBSON, *21st September, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

The commissioners received of Thomas E. Wilson the following checks drawn by them on the Union Bank of Louisiana, viz: One in favor of Thomas E. Wilson for one thousand five hundred and fifty-eight dollars and thirty-nine cents, given the 5th of August; one in favor of Thomas B. Ballard for four hundred and eighty-six dollars, given on the 13th September, and one in favor of Thomas E. Wilson for four hundred and thirty-eight dollars and twenty-five cents, given on the 20th September. These checks were all destroyed, and in lieu of them the commissioners drew one on the Union Bank of Louisiana in favor of Thomas E. Wilson for two thousand nine hundred and sixty-three dollars and twenty-three and three-fourth cents, which includes all the drafts destroyed as aforesaid and also the sum of four hundred and eighty dollars and twenty-two and three-fourth cents furnished by Mr. Wilson and paid over to Lieut. Kinny for provisions furnished Indians during the treaty.

FORT GIBSON, *23rd September, 1835.*

The board met.

Present, M. Stokes, M. Arbuckle, commissioners; W. Seawell, secretary.

498 The commissioners wrote a letter to the Secretary of War, enclosing him their accounts, &c., for all disbursements and expenditures made by them from the 4th of May to the 22nd of September, 1835.

FORT GIBSON, *26th September, 1835.*

The board met.
Present: M. Stokes, M. Arbuckle, commissioners. W. Seawell, secretary.
The board decided to send Lieut. Seawell to Washington City with the original treaty, and a transcript of all the proceedings of the board up to the present date; and they were forwarded accordingly.

(Signed) M. STOKES.
M. ARBUCKLE.

W. SEAWELL,
Lieut., 7th Inf'ry., Sec. to the Commissioners.

Hon. D. N. COOLY,
Com'r, etc., etc., etc.

DEAR SIR: Having gathered, from the C. & C. delegates, the ideas of the Secretary, I have, with a view to something more definite than can be reached by general conversation, taken the office draft of a treaty as a basis and attempted to make it express, with here and there an alteration, the wishes of the parties. At all events, the points of difference can now be narrowed down until, I trust and believe, they will disappear. Thinking I may, perhaps, be useful to our friends now, and perhaps facilitate your labours in this connection, I will be happy, if you find it altogether proper and agreeable, to call on you at your office at any hour you may name on any evening, or should your convenience be promoted it will give me great pleasure to see you at your house.

I think I see now an early agreement on all the knotty points.

I mention the evening, for I am in the midst of a court in Baltimore, and you are in the mornings anything but an idle man.

Very truly and respectfully,

J. H. B. LATROBE.

APRIL 4, 1866.

HEADQUARTERS, FORT ARBUCKLE, C. N.,
October 18, 1858.

Major MCDOWELL,
Asst. Adjutant-General, Head Q'rs. of the Army.

SIR: I arrived here October 12th, and the same day had the honor to receive your letter containing the instructions of the general in chief. I have given the subject since I received the letter my unremitting attention, and happily the materials and persons are in this vicinity to enable me to give all the facts required with some degree of confidence; but as I am required to report as speedily as possible I may venture some opinions, which I may ask the liberty to modify hereafter to a certain extent, but which will not in any degree materially effect the general conclusion.

499 As a preliminary fact necessary to be understood, which is probably known at headquarters, it is assumed that the 98th meridian of longitude, which defines the eastern boundary assigned to the Wichitas, does not run through Arbuckle, as laid down in Captain Marcy's map, but runs forty-two miles west of Fort Arbuckle; consequently the 100° meridian, which defines the western boundary of

the same tract, may be assumed to fall thirty miles west of Otter Creek, or the western base of the Wichita Mountains. For this I have the authority of a general map, published by the Department of the Interior in my name, and also the higher authority based upon the actual observations of the U. S. astronomer, Mr. Majors, now present at this post, in whose results I have entire confidence. This result at once excludes the Wichitas from the country in which they were recently settled and had planted corn for the last five or six years, and which was supposed, until Mr. Major's determination, to be between the 98th and 100' meridian of longitude, but which in fact is now proved to be 5 miles east of the meridian of 98.

Another preliminary question, in part connected with the above, is that of military jurisdiction between the Department of the West and the Department of Texas.

The Wichita Mountains, the strategic point of operations against the Northern Comanches, lies so near the line of these respective departments as to produce cross purposes in the action of both civil and military authorities, which has really occurred to some extent, as exemplified by recent occurrences. In considering the question it is therefore necessary to look at it in two points of view: First, that it belongs to the Department of the West; and, second, that it belongs to the Department of Texas. The whole district of country should, in fact, be one military department. When the two posts indicated by the commander in chief are established there will, I think, be no use for more than one company of horse, and that for a short time at Belknap, if these posts are assigned to Texas, for after they are established there will be no movement of Comanches in that vicinity, except a few straggling horse thieves. In the same way, if these posts, which will fall in the limits of the Department of the West, are retained in that department, there will be no necessity for keeping more than a company of horse at Arbuckle, whose duty it will be to chase straggling parties of marauders and keep the outposts advised of any occurrences.

Of "the propriety of establishing one or more posts in the Wichita country."

That such would be advantageous to the service I think there can be no doubt. Neither Indians or agents will attempt to occupy that country till protected by U. S. troops. The whole Wichita and Keechi Nation are now assembled about this post, having deserted their village forty miles west of this place and came into this post two days after my arrival, in apprehension of the Comanches.

Several eligible positions present themselves for a post on the southern slope of the Wichita Mountains, combining healthy climate, fertile soil, good permanent water, timber and stone suitable for building. Among these stands preeminently the site of the old Keechi and Wichita village, on the eastern branch of Cache Creek about fifteen or twenty
500 miles SE. from Mount Scott, the most prominent peak of the Wichita Mountains. There is also a point to the north of the Wichita Mountains on Clear Creek which runs into the Canadian River sixty miles east of the Antelope Hills, and several on the Washita River, but none combining the advantages of the first named in agricultural capabilities. Where troops are to be sustained, especially cavalry, the corn-growing

capacity of the country must be considered. The winters on the elevated plains near the base of the Wichita Mountains are cold, and grain is absolutely necessary to sustain animals in condition for efficient service, and the distance from the settlements is too far to haul it.

To give protection to the Wichitas in the peaceful occupation of their country and to enable them to cultivate the soil, for which they have shown a strong predisposition, I consider the point as indicated on Cache Creek as beyond all doubt the most eligible. Whether this post or any other single point can be selected, which at the same time will effect this object and will enable the command to keep a lookout on the northern Comanches and effectually check their depredations, is a matter of extreme doubt in my mind, and can only be determined by experiment.

The Comanches, like the Kiowas and Cheyennes, live at no particular place. They occupy ranges of country and move their camp whenever the grass is eaten up or burnt out. They are at present supposed to be ranging in the vicinity of the Antelope Hills and the regions about the head of Red River. They come down upon the settlements by trails leading both to the east and west of the Wichita Mountains. The post on Cache Creek if furnished with cavalry would watch the trails on the eastern side of the Wichita Mountains, including the unsettled country from thence to Arbuckle. It could not so effectually watch the trails on the western slope. To do that effectually a post on the west slope of the Wichita Mountains is necessary, and there are but two points which can furnish the necessary good permanent water, timber, and stone. The first is Otter Creek, or, as the Indians call it, Pecan Creek, which unites with the North Fork of Red River at the western base of the Wichita Mountains; and the other is Elk Creek, which unites with the same river thirty miles to the north.

Neither presents the advantages for cultivation of the point on Cache Creek south of Mount Scott, but they afford sufficient good water and wood and are healthy localities. West of these creeks for some distance all accounts concur in representing the water as bad and highly charged with salt of different kinds and the country as generally destitute of timber.

I therefore do not hesitate to recommend that two posts be established, one at Cache Creek and the other at Elk or Otter Creek, and that for the present neither Belknap or Arbuckle be entirely abandoned.

It is stated, and I believe truly, that a very large number of Indians, composed of Kiowas, Cheyennes, and Arapahoes, have joined the Comanches, and that the Comanches, among whom there was a peace party, are now united and act together, whether for peace or war is yet to be determined, but, whatever be their professions, the establishing of these posts will, for the moment, excite the combined opposition of all those Indians, and should not, in my opinion, be undertaken with less than four or six companies to each post.

501 In the meantime, the number of Indians collected about this post (Fort Arbuckle) under various pretexts and the unsettled condition of the Chickasaws on this frontier, many of whom have left their farms from apprehension of danger, would render inexpedient at this time the withdrawal of any considerable portion of the force from this post except for temporary purposes.

The whole country within a circuit of two hundred miles of the Wichita Mountains comes clearly within the same military relation, and to be governed efficiently must be governed by one head. At present it is divided between two departments, and the limits of these departments meet at the precise point where difficulties are most apt hereafter to arise. To which department the district should be assigned the General in Chief will be able to decide without any views of mine.

I may be pardoned, however, for the suggestion that it will not do to break up at this time the military communication through the half-civilized nations lying between this and the Missouri frontier. From what I learned along the road an occasional show of troops along that line is very necessary.

Supplying troops by the line of either the Red or Arkansas rivers has always been attended with vexatious delays and great expense, and in the end the new posts contemplated must, I think, look for supplies to some post on the Gulf of Mexico, to Helena or Gaines Landing, the nearest point on the Mississippi, or to Jefferson City, the present terminus of the Pacific Railroad. All are about equidistant from the Wichita Mountains; but the last has the advantage in the excellence of the road and the healthiness of the climate through which it passes, and the fact that most of it will traverse Indian Territory, which requires from time to time a show of military force though perhaps no permanent establishment.

In view of the great expense which will at first attend the subsisting of these new posts, it may not be out of place for me to suggest the propriety of establishing first the post for the protection of the Wichitas, who will probably raise corn enough the first season to supply that post, and who will, if judiciously directed, be enabled to supply the other post the following season.

Mr. Majors has been kind enough to furnish me a map of the country showing how the meridians run according to his determinations, defining the country within the two degrees leased for the use of the Wichitas &c., which I herewith submit.

I have the honor to be, your obedient servant,

W. H. EMORY,
Major, 1st Cavalry, Comdg.

HD. QRS. OF THE ARMY,
New York, Nov. 5, 1858.

The General in Chief approves the views of Major Emory, and he recommends the establishment of two posts in the district of country assigned to the Witchitas and Keechies Indians, one on Cache, the other on Otter Creek, for garrisons of two companies of cavalry and 1 of infantry, the post on Cache Creek to be established at once, the other
502 as early as may be practicable. Fort Smith, Arkansas, will be the proper depot for supplying the new posts.

The commander of the Department of Texas should have the direction of affairs in the Wichita country, and the General in Chief purposes to assign this portion of the Department of the West to the Department of Texas.

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Respectfully referred to the Adjutant-General for the information of the Secretary of War, by direction of the General in Chief.

L. THOMAS,
Asst. Adjt. Genl.

Respectfully submitted to the Secretary of War.

S. COOPER,
Adjt. Gen.

A. G. O., Nov. 8–58.

In the Court of Claims of the United States.

THE CHOCTAW NATION AND THE CHICKASAW Nation, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

No. 18932.

Deposition of a witness, produced, sworn, and examined at the hour of 1.45 o'clock p. m., on the 9th day of July, A. D. 1896, before me, the undersigned, a notary public, in a certain case now pending in the Court of Claims, wherein the Choctaw Nation and the Chickasaw Nation are the claimants and the United States and the Wichita and affiliated bands of Indians are the defendants, upon written interrogatories hereto attached:

Hugh L. Scott, having been produced as a witness on behalf of the defendant Indians, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon deposed and said that his name is Hugh L. Scott; that his occupation is that of a captain in the United States Army; that he is 43 years of age; that his place of residence is at Fort Sill, in the Territory of Oklahoma; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in this cause; that he is not related to the claimants, or any of them, or to the defendants, or any of them.

And thereupon the following interrogatories were put by me to the said Hugh L. Scott, who, in answer thereto, testified as follows:

1. Question. To what extent are you acquainted, if there be such, with the traditions of the Comanche tribe of Indians?

Answer. I have lived among the Comanches for more than seven years, and have had charge of some of them who were members of my troop of cavalry, and have talked with them almost daily for five years, sometimes about their traditions and beliefs.

2. Question. What, if any, are the traditions of the said tribe of Indians in regard to their inhabiting the tract of land known as the
503 "Leased district," between the Red and Canadian rivers, and the ninety-eighth and one hundredth degrees of west longitude; and also, if any, what are their traditions as to any other tribe or tribes inhabiting the same lands?

Answer. Tabananaca, one of the old Comanche chiefs, who died about 1892, told me upon one occasion that the Comanches came into this country before any other Indians (meaning the vicinity of the Wichita Mountains) except the Wichitas, who came first, and the mountains on the

North Fork of Red River, at the cattle-trail crossing, were named for the Wichita Indians, and so called by the Indians before the coming of the white man. Another old Comanche chief, White Wolf by name, now living on the Comanche Reserve, who grew up with Tabananaca, has told me within a week past that the Wichitas came to these mountains before any other Indians; that the Comanches were next, and afterwards the Kiowas and Kiowa Apaches.

3. Question. What are the sources from which you have derived the above information?

Answer. Tabananaca and White Wolf, old Comanche chiefs—the former dead and the latter now living.

The witness having answered the above interrogatories, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do to state it, says:

I have a copy of Catlin's "North American Indians." Catlin was an artist, and made a trip through this country with the First United States Dragoons in 1834. There is in this book a picture of the Wichita village on the North Fork of Red River as it was in 1834, at the base of the Wichita Mountains, in what is now known as "Devil's Canyon."

H. L. SCOTT,
Captain of Cavalry.

I, John G. Hewett, a notary public in and for the Territory of Oklahoma, certify that at the time and place aforesaid Hugh L. Scott, a witness on behalf of the defendant Indians in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the answers were taken down in my presence, and his deposition as above set forth was read over and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 9th day of July, A. D. 1896.

[SEAL.]

JOHN G. HEWETT,
Notary Public.

My commission expires March 14, 1897.

I consent to taking the deposition of Capt. H. L. Scott upon the foregoing interrogatories before any notary public, reserving the right to cross-examine the witness after publication of his deposition.

Washington, June 22, 1896.

H. E. PAINE,
Attorney for Chickasaws.

504 Cross-interrogatories to be propounded on the part of the United States to Capt. Hugh L. Scott, at Fort Sill, Okla., in his deposition begun July 9, 1896, the right to further cross-examination upon such answers as he shall make being reserved.

1. In question 2 you were asked as to the existence of certain traditions among the Comanche Indians, and in answer you state that Tabananaca and White Wolf told you that the Comanches came into the

vicinity of the Wichita Mountains before any other tribe except the Wichitas, and that the mountains were named for the Wichitas before the coming of the white man. Were any of the statements made by you on the authority of these two chiefs matters within the personal knowledge of eitheir of these chiefs (and if so, which statements), or do all these statements refer to matters occurring before the lifetime of these chiefs, and which were handed down to them as a matter of tribal tradition?

2. Did Tabananaca and White Wolf tell you about how long ago the Wichitas came to the vicinity of the Wichita Mountains; or what is the nearest date that you can give for their alleged coming, and on what do you base your statement?

3. What white men did you understand were referred to as coming into that part of the country?

4. What bounds can you give to the territory which you understand was actually occupied by the Wichitas north of the Red River; and on what do you base your statement?

5. How long did they continue to occupy all the country within those bounds; and on what do you base your statement?

6. You say, "The mountains on the North Fork of Red River at the cattle-trail crossing were named for the Wichita Indians, and so called by the Indians before the coming of the white man." Do you mean that the name of these mountains was "Wichita" before the coming of the white man; or if not, what do you mean?

7. Did not the Wichitas at one time cease to occupy any country north of the Red River, and did they not then occupy only country south of the river?

8. When did this cessation of occupancy occur?

9. Did the Wichitas actually occupy any country north of the Red River in October, 1820; and if so, within what bounds? On what do you base your statement?

10. When did the Comanches come into the district between the Red and Canadian rivers and the ninety-eighth and one hundredth meridians, sometimes known as the leased district?

11. What were the bounds of the territory actually occupied by them there; and on what do you base your statement?

12. Please answer the two preceding questions, substituting "Kiowas" for "Comanches."

13. Please answer the same as to the Kiowa-Apaches.

14. Are not Indian traditions very unreliable when it comes to matters of precise geography?

15. Is not the tendency in Indian traditions to magnify the tribe or other allied tribes, and to exaggerate the extent of their occupancy of territory?

505 Redirect interrogatories to be propounded upon the part of the defendant Indians to Capt. Hugh L. Scott, upon the cross-interrogatories on the part of the United States.

By Mr. WALKER, of counsel for the defendant Indians:

1. If you answer the sixth cross-interrogatory in the negative, please state, if you know, from what Indian language, if any, the word

"Wichita" is derived; the names by which the Comanche and Kiowa Indians, respectively, call the Wichita Indians and the Wichita Mountains, and the signification of these names in English.

2. In reference to the ninth cross-interrogatory, please state, if you know, where the Wichita Indians lived when they were, if they were, visited by the smallpox epidemic of 1818. Whither did they move after that, if they did so move? State the sources of your information.

3. In reference to the eleventh and twelfth cross-interrogatories, please state, if you know, whether the so-called leased district was, prior to the setting off of the Comanche-Kiowa reservation, the main portion of the Comanche-Kiowa habitat, if it was a portion of it; and, if you answer in the negative, state, if you know, where the main Comanche-Kiowa range lay, in relation to the leased district, before the said reservation was set off. State the sources of your information.

4. In reference to the thirteenth cross-interrogatory, please state, if you know, what differences of territory have existed within historic times between the Kiowas and Kiowa-Apaches. State the sources of your information.

Replies to cross-interrogatories hereto attached, concerning the case at issue between the Choctaw and Chickasaw Nations *v.* the United States and the Wichita and affiliated bands of Indians.

Reply to question No. 1. The statements referred to matters before the lifetime of these chiefs, and were handed down to them, as I understand them, by tribal traditions.

No. 2. They did not tell me how long ago.

No. 3. They spoke of it as the time before they knew of the existence of any white men.

No. 4. The Wichitas, Kiowas, and Comanches speak of the vicinity of what are called by the white people the Wichita Mountains, and as Indians lived largely by hunting (although these Indians did a little planting), it required a large extent of country to support them. In telling stories of old times they relate events which occurred in various places, which show that in a general way they occupied the country conjointly with the Kiowas and Comanches from the Cross Timbers on the east to the borders of the Staked Plains on the west, and from the Canadian on the north to the Red River on the south, although they sometimes went outside of those boundaries, and during a part of our civil war were on the Arkansas.

No. 5. I do not know.

No. 6. I mean that those mountains were named by the other Indians after those people the whites call the Wichita Indians, and who call themselves Kiddi ki dish.

No. 7. Not to my knowledge.

506 No. 8.

No. 9. As I have not made any investigation of this subject with reference to the point at issue, I can give only such points that have come up in the investigation. I have made reference to other subjects and there are many gaps in their history which I can not fill—this is one of them—and serving most of my time on the plains I have had but little access to libraries where these matters can be looked up.

No. 10. They say themselves that they came here from the Northwest at a time that they used dogs for pack animals and had no horses, and found the Wichitas here before them. One Comanche man mentioned the Caddos also as being here—Cabeya is his name. He also mentions having horses at time of separation from Shoshones, but is the only one who does that I have questioned.

No. 11. The Comanches say they were divided up into different bands which occupied different parts of the country at the same time (as the Sioux have always done within historic times). The Penetethka Comanches regarded central Texas as their especial country. The Quahadas occupied the Staked Plains and eastern borders; the Yapparikas the Arkansas, Canadian Red, and Washita rivers; also the Noconies.

Capt. John Pope reports (Ex. Doc. No. 78, Thirty-third Congress, second session, p. 14) that in 1853 the Comanches were variously estimated at from 15,000 to 40,000 souls. "They roam as far to the north as the thirty-eighth parallel of latitude, and passing the Rio Grande, 500 miles from their homes, they invade the dominions of Mexico within 250 miles of her capital" (p. 15). "During the summer months nearly the whole tribe migrates to the north to hunt buffalo and wild horses on the plains of the Upper Arkansas, but return in the autumn with the proceeds of their hunting expeditions to pass the *the* winter in the timbered country along the valleys of the Upper Colorado, Brazos, and Red Rivers" (p. 16). "The range of the Comanche Indians extends over the plains of the Arkansas from the vicinity of Bents Fort, at the parallel of 38°, to the Gulf of Mexico, and they occupy the country along the route of this expedition from the eastern base of the Llano Estacado to about the meridian of longitude ninety-eighth. (See Long, 1819; also Conspiracy of Pontiac, 1689, Parman.)

No. 12. The Kiowas state that they joined the Comanches and made peace with them near the head of Red River at a time they used dogs for packs; that they got horses from the Comanches, and have lived with them (in each other's camps) ever since. (See Pope; also, for Kiowas and K. Apaches; also, Long's Expedition, 1819.)

No. 13. (See answer for Kiowas.)

No. 14. The older Indians of this section can draw a better map of the landmarks and rivers of this country between the Arkansas River and the Rio Grande than the average white person can. I have in my possession evidence as to this fact in the shape of maps and trails drawn by Indians.

No. 15. It is the tendency of all peoples, as far as I can judge, to magnify their own importance; and it is believed that the English especially are exaggerating the extent of their occupancy in various parts of the world, notably in Venezuela.

507 Replies to redirect interrogatories by Mr. Walker, of counsel for defendant Indians:

No. 1. The Wichitas have told me that the word "Wichita" belongs to the Osage language, but I have not yet verified this statement. They call themselves "Kiddi-ki-dish," which signifies tatto'ed around the eyes. Their tribal sign is made by drawing a circle around the right eye or cheek bone with the point of the right forefinger.

The Comanches call them "To cana" in their language, which the veteran Comanche interpreter, H. P. Jones (who has been with the Comanches for over thirty years, and has been post guide and interpreter at Fort Sill ever since it was built), states means "dark houses," owing to the darkness inside of their thatched houses.

The Kiowas call them 'To-goo-a, or tatto'ed in rings, and the mountains 'To-goo-a 'co, in which the ' indicates an explosive t and c. When speaking of these mountains in the sign language the sign for Wichita is made with the sign for mountains.

No. 2. I do not know.

No. 3. It was one of the main portions of the Kiowa and Comanche habitat, as stated above by Pope, also by the stories told of occurrences both by Kiowas and Comanches that happened in this section, and by their traditions. (Price's Across the Continent with Fifth Cavalry, and Marcy.)

No. 4. According to the Kiowa and Apache traditions they both originated in the far north, about the head of the Missouri River; that they fought each other for a little while and then made peace, and have been close friends ever since; migrated south together, and the Kiowa Apaches made the seventh band in the Kiowa tribal circle when they assembled for their medicine dance.

H. L. SCOTT,
Captain, Seventh Cavalry.

508 In the Court of Claims of the United States.

THE CHOCTAW NATION AND THE CHICKASAW Nation, claimants,
vs.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.
No. 18932.

To the ATTORNEY-GENERAL,
On behalf of the defendant, the United States;

J. S. STANDLEY, Esq., and SHELLABARGER and WILSON,
On behalf of the claimant, the Choctaw Nation, and

H. E. PAINE, Esq.,
On behalf of the claimant, the Chickasaw Nation.

Please take notice that we shall take the depositions of Philip Walker, James Mooney, and Harry King, witnesses on behalf of the defendant Indians, in the above-entitled cause, at the office of J. M. Vale, esq., in the Atlantic Building, in the the city of Washington, on Monday, at one o'clock p. m., June 29th, 1896.

J. M. VALE,
A. A. LIPSCOMB,
Attorneys for the defendant Indians.

PHILIP WALKER,
W. C. SHELLEY,
Of Counsel.

WASHINGTON, D. C., *June 26, 1896.*

509 Service of a copy of the above notice is hereby accepted as of June 26th, 1896, with the understanding that counsel for the United States, if unable to be present, reserves all exceptions and right of cross-examination.

CHARLES C. BINNEY,
On behalf of the United States.

For the Choctaw Nation.

H. E. PAYNE,
For the Chickasaw Nation.

510 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation *v.* The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. Notice of intention to take testimony. June 29, 1896. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants. Philip Walker and William C. Shelley, counsel.

511 WASHINGTON, *June 29, '96.*

S. G. HOPKINS, Esq.,
Notary Public.

DEAR SIR: Prior to your certification of the deposition of Mr. Phillip Walker, in the case of the Choctaw and Chickasaw Nations *v.* United States et al., Court of Claims, No. 18932, please enter a reservation, on behalf of the Chickasaw Nation, of the right to object on the ground of incompetency, or irrelevancy, or any other lawful ground, to any documents filed as exhibits to said deposition.

Very respectfully,

H. E. PAINE,
Counsel for Chickasaws.

JUNE *30th, 1896.*

Delivered to me this 30th day of June, 1896, by H. E. Paine.

S. G. HOPKINS, *N. P.*

512 Deposition of a witness produced in accordance with the notice hereto attached, sworn, and examined at the hour of one o'clock p. m., on the 29th day of June, 1896, at No. 930 F street northwest, in the city of Washington, District of Columbia, before me, the undersigned, a notary public in and for the District of Columbia, in a certain cause now pending in the Court of Claims, wherein the Choctaw Nation and the Chickasaw nations are the claimants, and the United States and the Wichita and affil/iated bands are defendants; when were present, H. E. Paine, counsel on behalf of the claimant, the Chickasaw Nation; Shellabarger & Wilson having been notified of this session by a copy of the notice hereto attached being left in their office in the hands of Mr. Hoehling by Mr. Walker, counsel herein; and J. M. Vale and Philip Walker, counsel on behalf of the defendant Indians.

PHILIP WALKER, having been produced as a witness on behalf of the Wichita and affil/iated bands of Indians, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to said cause; and thereupon deposed that his name is Philip Walker; that his occupation is that of an attorney at law; that he is 37 years of age; that his place of residence is Washington,

D. C.; that he has the following interest in the claim which is the subject of inquiry in this cause, to wit: The Wichita and affiliated bands of Indians entered into a duly approved contract with J. M.
513 Vale, Andrew A. Lipscomb, George D. Day, and Dennis W. Bushyhead, whereby the said parties, as attorneys for said Indians, are to receive 6½ per cent of any amount which may be recovered for the said Indians in this cause. By duly approved assignments the witness is entitled to one-twentieth of that compensation. That he is not related to the claimants or any of them, nor to the defendants or any of them.

And thereupon the said Philip Walker was examined by counsel for the Wichita and affiliated bands of Indians, and in answer to interrogatories testified as follows:

By Mr. VALE:

Q. Referring to the papers I now hand you, which have been prepared for exhibits in this case, having been so prepared with a view to filing the same herein under the stipulation entered into between the Indians who are claimants and the defendant Indians, and they are now so filed, bearing Nos. 1 to 27, inclusive, please state what the same purport to be and what you know of the authenticity thereof, and how they were prepared for use as evidence in this case?

A. They are all true copies of the originals which will be found in the places designated at the heading of each exhibit, having been compared with those originals by me.

Exhibit No. 2 is taken from the record in the Greer County case, in which it purports to be a translation of certain copies of the original
514 Spanish manuscript found in the general archives of Mexico.

Exhibit No. 7 is photograph from one of the illustrations in Catlin's Manners and Customs of North American Indians, which was prepared by the photographer of the Bureau of Ethnology.

Exhibit No. 14 includes extracts, translated by me from the original French, of a compilation prepared by Pierre Margry. I am fully conversant with the French language, and the extracts in this exhibit are an accurate translation of the original.

Exhibit No. 15 is a reduced copy of the John Senex map of North America, taken from the volume on Indians in the 11th Census of the United States. I have compared this map with an original on file in the Library of Congress and found it to be an accurate reproduction, upon a reduced scale, of that portion of the map which it purports to cover.

Exhibit No. 18 was also translated by me from the original French of Le Page du Pratz in his History of Louisiana. The same is a correct translation from the original French.

In exhibit 25 the map showing the cession of the Cherokee, Creek, Seminole, and Choctaw and Chickasaw nations by treaties of 1866, together with the lands retained by those nations, was prepared by me from said treaties upon the basis of the map of the United States published by the United States Geological Survey.

515 I may add that these exhibits contain everything, so far as I have been able to discover, in the works and papers from which they are extracted which refers in any manner to the tribes who are at controversy herein or the territory at issue in this cause.

Cross-examination by Mr. PAINE:

Q. In looking over a few of these papers which you have filed as exhibits in this case I find the names of the different Indian tribes. I would ask what designations of Indian tribes you apply to the defendant Indians in this case?

A. In all cases, whether in the English or in the translation from the French, I have given the name exactly as it appears in the original without attempting to give the tribe its modern designation, leaving that for the court to infer. The Wichita tribe is variously known in the exhibits as Wichita, Witchitaw, the Ouichita (which is the French designation), the Towiache, and various other names of almost identical sound but slightly different spelling, originating from the Spanish name of the same Indians, and Pawnee Picques and other names of similar sound sometimes applied to them by the early French from their relationship to the Pawnees. Associated with the Wichitas will be found the Towakarehu, sometimes called the Towakoni, which is a clan of the Wichitas,

515½ and is frequently described by other names having similar sound but different spelling from the two given. The Wacos, called by the Spanish the Hueco; the Caddos, called by the early French the Cadodaquious, and the Kechai, also, are designated by other names of similar sound but different spelling. The affiliated bands of Indians include some Delawares and the remnants of many otherwise extinct bands or tribes of Texas Indians who have become absorbed in the tribes or bands specifically designated.

Q. Are there any names in these exhibits in addition to those which you have already applied to the Wichitas which you apply to that tribe?

A. There are no other names of which I am now aware but what are idem sonans with those already mentioned, except perhaps the Paniouassa or Paniassa, which is, I find, under the latter name, placed upon Senex' map already referred to. The name of Nihata appears as a village on the upper Red River on the Senex map, and is also found in Exhibit 4 in John Sibley's report to the Secretary of War, under the name of Niteheta, as one of the towns of the Panis or Towiaches. This is probably not a tribal, but simply a village designation.

Q. Do you apply the name "Nihata" found on the map of John Senex to the Wichita?

A. I consider it as one of the Wichita villages on the Red River, from the description given of them by Sibley. I found no other reference to that name.

Q. Then you are disposed to make Nihata and Niteheta identical?

A. They are more nearly so than many other cases which I have found where two authors have attempted to indicate the same Indian sound by the English alphabet.

516 Q. Have you any other reason for the application of the name Nihata to the Wichita tribe than the fact that John Sibley names one of the Towiache villages Niteheta?

A. I have not.

Q. As I understood you, you stated that you had compared the exhibits which you have presented with the originals, and found them to be accurate copies. Did I understand you correctly?

A. I have compared the exhibits with the papers from which they were copied. In the Greer County Case I have considered as original the printed record of the case in the Supreme Court of the United States. Otherwise the exhibits have been compared by me with the original printed documents.

Q. You did not mean the original manuscript documents?

A. I have not filed as exhibits the copies of any manuscripts.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows any other matter relative to the claim in question, and if he do to state it, says that he knows of nothing further relative to the matters as to which he has testified.

PHILIP WALKER,
501 D St. Northwest, Washington, D. C.

S. G. HOPKINS.

517 I, S. G. Hopkins, a notary public in and for the District of Columbia, certify that at the time and place aforesaid Philip Walker, a witness on behalf of the Wichita and affiliated bands of Indians, defendants in the above entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to said cause, and that the answers were taken down in my presence and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 30th day of June, 1896.

[SEAL.] S. G. HOPKINS, *Notary Public.*

[Of the exhibits to this deposition, Nos. 3, 5, 8, 10, 11, 20, 21, 22, 25, 26, and 27 are (by agreement of the counsel for the defendant Indians' filed May 19, 1899) omitted from this record, being copies of public documents or other matter published by authority of Congress and subject to judicial notice in the argument of the case.]

518 (Indorsed:) U. S. Court of Claims, No. 18932, the Choctaw Nation and the Chickasaw Nation v. the United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. . Deposition of Philip Walker, a witness for the defendant Indians. June 29, 1896. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun. 30, 1896, Court of Claims.

519 [Extract from the works of Hubert Howe Bancroft, Vol. XV: History of the North Mexican States, Vol. I, San Francisco, 1884.]

(Library of the U. S. Geological Survey.)

(Pp. 626-628.) In the mean time it had been decided, as we have seen, to establish a presidio with one hundred men on the Rio San Saba. The cause of Apache conversion found an enthusiastic and powerful promoter in the person of Pedro Romero de Terreros, conde de Regla, who in 1756 offered to pay the whole cost for three years, not including that of the military establishment already ordered, of as many missions not exceeding twenty as could be advantageously founded under the general

supervision of Padre Alonso Giraldo Terreros of the Queretaro College. The offer was accepted. The colleges of Santa Cruz and San Fernando were to furnish each half the needed friars, and Colonel Diego Ortiz Parilla was appointed to the military command. The expedition, including five padres, reached Béjar at the end of 1756, and proceeded in April, 1757, to the new field. The presidio was called in the viceroy's honor San Luis de las Amarrillas; and the mission of San Sabá was located a league and a half distant on the river. The Apaches were pleased and friendly, but declined under one pretext or another to congregate permanently at the mission. Padre Terreros was soon forced to admit in letters to his superiors that he had been grievously disappointed in the character of the natives, and that the prospects for successful mission work were far from encouraging; yet with two companions he remained and undertook the task.

The real motive of the Lipanes in favoring the founding of a presidio and mission was to utilize the Spaniards as allies against the Comanches and other hostile tribes, by whom they were hard pressed. The
520 northern inland bands, crediting the Apache boasts of their new alliance, became bitterly hostile to the Spaniards, and formed a league to defeat their new foes. The Apaches, well pleased with the course of events, gave warning of the approaching danger, a warning that caused so much terror at the different forts that but little attention was given to the protection of San Sabá. Yet Parilla sent a force of seventeen men to reenforce the guard; and the next day, March 16, 1758, the savages appeared some thousand strong under the command of a Comanche chief at the mission. Too late to effect a surprise, they obtained admittance by pretending friendship and soon began their work of destruction. The buildings were plundered and burned. The only survivors were Padre Molina and two or three soldiers, who managed to conceal themselves and escaped at midnight. Padre Terreros was killed with a bullet, and Padre Santistévan was beheaded. The number of victims is not known, but they included a party sent from the presidio and drawn into an ambush. Only a few Apaches were present to share the disaster.

In his report of this affair Parrilla recommended a removal of the presidio, an increase of the force to one hundred and forty men, and an expedition to chastise the savages. Only the last suggestion was approved in a junta held in Mexico, in June; and a conference of officers at Béjar, in January, 1759, made plans for the campaign. At the same meeting Padre Morales presented a defence of the friars, who it seems had been blamed for the late disaster, and even offered in behalf of the college to give up the mission; but his proposal was declined. The army
521 of five hundred soldiers and volunteers, with a large force of Apache auxiliaries in the best of spirits, started in August under the command of Parrilla. After marching some hundred and fifty leagues they surprised a ranchería, killing fifty-five of the foe and taking many captives. Then they advanced against the towns of the Taovayases, and in the region of what was later called San Teodoro found six thousand Indians of different tribes in a strongly fortified position, many of them armed with muskets, and displaying a French flag, though there is no reason to suppose that they were in any way aided by the foreigners.

The savages did not wait to be attacked, but made a sortie in force, and the Spaniards fled in a panic, only the Apaches making a slight resistance. Thus an expedition which had cost $60,000 accomplished nothing.

522 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation, v. The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 1. Extract from the works of Hubert Howe Bancroft, Volume XV. S. G. Hopkins. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun. 30, 1896. Court of Claims.

523 [Extracted from the record in cause No. 4, original, October term, 1891, Supreme Court of the United States, entitled "The United States vs. The State of Texas," known as the "Greer County Case," pages 860 et sequitur.]

It is there stated that the said extracts are translated from copies of the original reports in the Bancroft Pacific Coast Library, at San Francisco, California.

524 DOCUMENTOS, P. 264 B, VOL. II.

[Extracts and letters of Lieutenant-Colonel Mesieres, taken from books 27 and 28, general archives of Mexico, copies of which are in the Bancroft Pacific Coast Library at San Francisco, California.]

EXPEDITION OF LIEUTENANT-COLONEL DON ANTONIO DE MESIERES.

No. 1. With one lieutenant and 22 soldiers from Bexar, six militiamen from Natchitoches, and his two sons, he started from Bexar to Bucarely, whither he arrived on the 9th day of March, '78.

With no delay but that which was necessary to provide himself with subsistence, he despatched to Don Bernardo Galvez the letter which had been entrusted to him.

At the Santa Cruz fort he left the royal road, which he resumed above the frequented crossings of the Guadalupe. He passed over a rough and pathless country, where the Comanches had their pens and houses, but without finding any sign of these Indians, who left more than one year ago to commit their depredations elsewhere.

Next to the Guadalupe he crossed the Colorado and Brazos, abounding in all sorts of birds and fishes, and on their margins there are valuable timber and quarries. There is here an abundance of cows and estray horses. The interval between the rivers is covered with buffaloes, deer, bear, wild goats, wild boars, hares, partridges; turkeys seen in those prairies.

The climate is salubrious, moderately hot and cold, with luxuriant pasture and various medicinal weeds, several creeks running per-
525 manently, and lofty trees on their banks, also fruits maturing in proper season, such as grapes, persimmons, nuts, and acorns.

The settlement of "Nuestra Señora del Pilar de Bucarely" is situated in a spacious prairie, watered by the large Trinity River. There has been so far no irrigation, although the commandant assures that it may be easily obtained at the short distance of six leagues, although comfort may be secured without it.

This settlement ought to be encouraged for the following reasons:

1st. Because, being at an equal distance from Bexar, Natchitoches, and the northern nations, communication may be promptly established with those points.

2d. Because, being a neighbor to the Tancagues, Taucanas, and Yecanis to the north, and to the south to the Orcoquizas and Atacapas, a close friendship may be entertained with them, and by means of the former advice may be obtained of incidents in the north, and of the latter of what may happen on the coast and adjacent islands.

3d. Because, being adjacent to the small Vidaes, San Pedro, and Nacogdoches tribes, necessary assistance may be looked for from their old, invariable friendship.

4th. Because, it being demonstrated that the Trinity River is navigable to the sea, and that launches may through it reach the port of Opelousas, where a river empties that leads to New Orleans, the three crops of flour made here might be transported at a small expense; also tallow, grease, hides, and horns, which ought to become very
526 plentiful at Bucarely, and thus foreigners would be deprived of the advantages offered them by Louisiana.

The Videaeas Nation has about a hundred warriors, having lost an equal number of men during the epidemy, in which the zeal of Reverend Father Joseph de la Garza was so conspicuous. These people are roving and lazy; having given up hunting, go begging in the settlement, and are very annoying.

He (De Mésieres?) heard from a trusty trader who came from the coast that a party of ninety Carancagues were visiting among the Orcoquizas, to whom they told that several families of their nation had gone to live on an island lying between the mouths of the Colorado and Brazos, where they found anchors, bells, kettles, artillery, and other wrecks of ships cast by the sea. The same trader told him that many of the Carancagues speak our language, from which he infers that they are apostates, and that if that establishment is not destroyed others will join it, to the great injury of the mission; for this reason he refused trading with them, as they desired.

Opposite that island there are twenty families of Cocos and Mayeyes; also deserters from the missions of San Antonio and La Bahia.

Bucarely, March 18, 1778.

No. 2. On the 18th he started with the same troops (except one soldier who remained sick at Bucarely), being joined by thirteen militiamen, their captain, and Father Garza, all of that new settlement. Course north.

At 18 leagues he found a party of Quitreys Indians with twenty warriors, who, having parted with the main body of their nation, had
527 established themselves there in a large and fertile valley, where they keep their horses. There are in the vicinity salt pits, which they avail themselves of for selling and salting the deer they kill for food, keeping the skins for trade.

Here the road passes over steep, rocky hills, deep vallies, creeks, lagoons, and bogs, which, with the rain, caused them much trouble. He praises the spirit and zeal of the Spaniards in overcoming them, but the whole of this mean road affords a prodigious quantity of grapevines, which, although

wild, yield a fruit often not inferior to that of Castile, in the opinion of experts. There are also found viperine, "contrayerba," sassafras, and small potatoes, which have sometimes been used as food at Bucarely.

"Rancheria" of the Quitreys, March 23d, 1778.

No. 3. He started from here on a western course, and for the space of fifteen leagues there was not a handbreadth of soil that is not suitable for cultivation, being composed of woods and prairies interspersed by many streams, until the place is reached called by the natives "La Tortuga" (the turtle), an eminence that overlooks a wide plain, and from which a crystalline spring gushes forth.

In the vicinity the Tancagues live, not in a village, but under tents made of skins. They are divided into several squads that act and move at the whim of their chief. They are 300 warriors, including not a few apostates. They are bold and inclined to theft. They took a great part in the insults offered by the presidios of San Saba, Bexar, and Bahia, in which they would persevere were they not restrained by the example, influence, and threats of the Tuacanas and Yscanis.

He did not find the captains who had gone scattered in different
528 directions, but he sent them notice to be assembled when he returned, intending to seriously insist personally that they should surrender the captives, preserve good harmony, and engage them to form a settlement where they might live in peace and devote themselves to the cultivation of the soil, for did they persevere in their evil practices, result of their brutal mode of living, they would be prohibited trading and exposed to starve and be destroyed by their enemies.

Tortuga, May 28th, 1778.

No. 4. One soldier from Bexar and two militiamen of Natchitoches were left sick at La Tortuga. De Mesieres followed the same western course, and for the space of sixteen leagues admired the same disposition of the land, the woods, and the waters, until reaching the Brazos, which was swollen, but, with the assistance of the Tuacanas settled on the opposite bank, he crossed it promptly. He was received with demonstrations of sincere love. On the next day the principal men of the nation assembled, and he informed them of the arrival in the provinces of the superior commanding officer; spoke of his genial kindness to the natives and of his powerful protection which he bestows on the friends, among whom they are, owing to their loyalty, which was gratifying to them.

Next he spoke to the Xaramane apostates who had sought a refuge there, advising them jointly with Father Garza, but they made no answer. Seeing their reluctance, he induced the Tuacanas to oblige them, either by kindness or by threats, to return to their jurisdiction, as it was the order of the commanding general. They showed such zeal that none of them declined, and all of them gave him their word to comply with it upon the return of
one of their parties who had gone hunting. Whereupon, and at
529 the request of the apostates, he wrote to the governor to send orders to the mission of Espiritu Santo to prepare supplies and horses and the necessary escort to receive them on the Colorado River and thence to the mission from which they had fled more than 16 years ago. They are, all told, more than one hundred persons.

He recommends the part taken by Padre Garza, the retired lieutenant, Don Antonio Treminio, Lieutenant Don Joseph Menchaca, of Bexar, and the captain of militia, Don Antonio Gil y Barbo.

This Tuacana village contains about 150 warriors. It is situated in a fertile prairie and protected from the overflows of the river by a high wall, at the foot of which there is a spring which supplies the inhabitants with water. They might even obtain irrigation from it, but they do not know the advantages of it. They are industrious and are very friendly to us, as is proved by the surrender of the apostates and by their giving food to the people of Bucarely without even reserving a sufficiency for their own support until the next crop, for which due thanks were returned to them.

They complain bitterly of the Comanches, who, having established themselves on the same river, insult them, which may compel them either to withdraw or jointly with the neighboring nations to form a serious determination against that common enemy.

They are violently opposed to the apostates and have resolved to go and seek them in the places where they know them to be raising crops.

He expressed to the captain of the Tuacanas the pleasure that would be caused to the commanding general if their neighbors, the Tan-
530 cagues, would live in villages, devote themselves to the cultivation of the soil, and forego their wretched vagrant mode of living, otherwise he would certainly deprive them of trade. This proposition seemed very just to them. A captain of the Tancagues came to whom the other captain spoke with such earnestness on the subject that he does not doubt that that end will be attained.

Tuacane settlement, April 5, 1778.

No. 5. Followed the same western course on the Brazos, which is navigable a greater part of the year and here especially beautiful. One of its margins is a prairie and the other fine hills. At a distance of eight leagues, on the same bank, there is another Tuacana settlement. Its lands are even better than those of the former settlement and more abundant in what might be desired by an industrious community, such as timber, limestone, and grind and hewing stone, all of which he saw with his own eyes. There are so many springs that, in a short space, he counted eleven of them, very abundant, which could be united without difficulty and thus bring about desirable advantages. The genius of the people is exactly alike that of the former settlement and they are greater in numbers. Their love for De Mesieres is such that they offered to accompany him till the end of his expedition.

They do also complain very much of the Comanches, who penetrated among them without accounting for this proceeding, which De Mesieres reported to the governor of Texas for his information. Their hatred to the Lipans is such that they always refer to it in their conversations, and De Mesieres attributes a great part of the love they show to him to the care with which he made them understand that he, too, is their enemy.

Main settlement of the Tuacanas, April 7, 1778.

531 No. 6. De Mesieres, being persuaded of the importance of the conversion of the Xaramanes, informed, by agreement with them, the governor of Texas, the Baron de Ripperda, of their resolution, asking for the needed assistance for their journey; and in case that this small number of men might be exposed to risks from the Comanches, he detailed Lieutenant Menchaca, from whose zeal, galiantry, aad experience he anticipated a successful issue, to escort them. Father Garza is also

returning to Bucarely, the Xaramanes having applied for him to be their minister. It was therefore considered proper that Captain Gil y Barbo should accompany the father with his militiamen, who having neither arms or supplies are considered as unfit to accompany the expedition, and with their industrious chief, to whom several errands were entrusted to be discharged on the road, may devote themselves to raising crops and taking charge of their families.

He remained with a few soldiers and five militiamen, whom he kept with the retired lieutenant, Tremiño, to go and see the Tavaoiases and Mahas, to assure them of his good will due to that which they entertain for us, and to advise them to establish themselves in the locality selected for them, which, as they desire, will be either on the Brazos or on the San Xavier river, where they may conveniently oppose the Comanches, against whom they have causes of dissatisfaction, and check or rout them with the assistance of other nations equally interested in the destruction of those robbers. He concludes with the assurance that he will report his action without ever swerving from the instructions he has received.

Tuacana, April 8, 1778.

532 SECOND REPORT. P. 271 b.-280 b., Vol. II.

No. 1. After having despatched to Bucarely Lieutenant Menchaca and Captain Gil y Barbo, of the militia, De Mesieres continued on his journey, being accompanied by six soldiers from Bexar, four militiamen from Bucarely, four from Natchitoches, a Tauacana captain with nine Indians, and a Comanche, who having been a prisoner at Bexar obtained his liberty, and having been well treated, gratefully offered to serve as guide, interpreter, and mediator with those of his nation.

After seven days' march he reached the Taovaiase village. The beauty of the country over which he traveled, eighty miles, is beyond expression, being interspersed by many streams that will afford irrigation of the prairies and the banks of which are covered with forests. The rocky foundation of their beds will render easy the opening of ditches, and, finally, it abounds in buffaloes, herds of deer and antelopes, turkeys, partridges, geese, cranes, rabbits, and hares, that contribute both to pleasure and to comfort on the road.

From the Brazos River, on which the Tuacanas dwell, to the stream that waters the Taoaviase village, there is seen on the right a [forest], un monk, justly called by the natives the Big [Forest], el grande (the cross-timbers?). It is very thick, although not very wide, and seems to have been placed there by Providence to guide the inexperienced traveler or to offer a shelter in its narrow extent to those small in number or lacking resolution.

Taovaiases, April 18, 1778.

533 No. 2. The Taovaiase nation is divided into two villages, one situated north of the "Rio Bermejo" (Red River) or of Natchitoches, and the other fronting the first and on the opposite bank. The former village is composed of thirty-seven houses, and the latter of 123 houses. Every house contains from ten to twelve beds, from which it is computed that the number of men, including the youths, reaches beyond 800. The number of women and children of both sexes is very large. They wear only shirts, and their shoes are of skin. Their jackets,

shields, and horse equipment are of the same material. Their foresight in supplying themselves with food is creditable to their industry. There is no house where there are not four or five bulls and vessels full of corn, containing ordinarily four and a half "fanegas," with a great quantity of beans and pumpkins, the latter being kept one year to be curiously adorned like mats. They raise also melons and tobacco in abundance. Spring water is used to drink and moisten and irrigate their seeds. The river water is brackish and a great attraction for the stock that grazes on the banks and is killed at any hour. Fish is of the best kind, but they are not fond of it. They have fuel at hand in that big forest above mentioned and extending eighty leagues in length and one, two, or more leagues in width, where bear and wild hogs are found.

Nor are they deficient in useful timber, such as cottonwood, ash, elm, mulberry, black and white walnut, the first available for boards and the last for its oil. The quarries are used by the Indians only for extracting grindstone to sharpen their arrows, for grinding corn, and the white stone for pipes, flint stones to head their arrows and make fire. The climate is neither too hot nor too cold. Finally, in order that
534 they may be in want of nothing, there is in the middle of the river a salt bank, from which they extract excellent salt which is growing there so that when any quantity is removed the loss is soon restored, some samples of which have been preserved.

These *da*vantages are counterbalanced by their difficulties with the Osages, who are waging bloody wars against them; the Apaches, who molest them incessantly, and the Comanches, who, under the cloak of friendship, frequently visit and rob them, which they overlook, not to make more enemies than they have already.

Their government is democratic, women not being excluded from it, since they contribute to the welfare of the commonwealth. They tan, dye, and sew the skins, fence in the fields, gather the crops, cut and carry fuel, cook, build houses, and raise the children, to relieve and please their husbands, engaged only in hunting and war. From the former they acquire comfort and from the latter fame and become chiefs, not owing to the powess of their ancestors, but to their own gallantry, to which should be added their persuasions to obtain happiness in a future life. They practice little or, rather, no worship, their veneration for fire being most conspicuous among ridiculous superstitions. They are cheerful, affable, and tractable in their intercourse, kind to the sick, orphans, and widows, respectful for old age, liberal with strangers, and attentive to their guests; yet they are more inclined to resentment for offenses than to gratitude for favors, as is demonstrated by the atrocities inflicted to their enemies, the relation of which would cause horror.

The "Rio Bermejo" runs from the mountains of New Mexico at about four days' travel from the Tabaoiaces and forms three forks, which
535 unite near the village. The north fork contains the salt bank above referred to. At the junction there is yet little water except in the risings, which do not last, owing to the swiftness of the stream. It receives other streams that render it navigable, and, flowing into the Mississippi sixty leagues before it reaches New Orleans and five hundred leagues, following its meanders, from its head, it affords communi-

cation with Natchitoches and the neighboring nations. It runs E. N. E. and divides the province of Texas from that of Louisiana.

Taohiases, April 18, 1778.

No. 3. De Mesieres having previously sent notice of his approach to the Taovayases, the chiefs went out to receive him out of the village, dismounted from their horses, and raised him on their shoulders. They did the same with Lieutenant Antonio Tremiño, whom they love dearly, as they had taken him prisoner, treated him as a son, given him his liberty, and accompanied him to his country. They showed the greatest pleasure at seeing and entertaining for the first time the Spaniards of Bexar. They had their arrival heralded, inviting the women and children to come and see them, and this notification was followed by such gathering as is habitual to see strange sights. During their sojourn in the village they brought them all sorts of food in abundance. The day appointed by De Mesieres having come for a general assembly to present to them the gifts sent to them by the commanding general, through the governor of Texas, he assured them of the good will and protection of the two chiefs of the internal provinces and Louisiana. They were so pleased that they ordered instantly the building of a house where our people who might hereafter come to visit them could live without
536 being disturbed, and not satisfied with these demonstrations they asked De Mesieres to request the commanding general to send Spaniards who would settle among them, assuring him that the necessary assistance for a new settlement would not be wanting. He gave them his word to do so, and gave to the two villages the names of San Teodoro and San Bernado, in honor of the two chiefs, and urged them to carry out this demonstration of their affection.

He believes that the occupation of this site by a good population would be of the greatest advantage in the present and future, it being our key to the north, from which intercourse might be kept up with friendly nations, such as the Comanches and Osages, and full knowledge of the more remote ones might be obtained and any undertaking or invasion by the neighboring English might be checked. Prompt and easy communication might be obtained with Natchitoches, the Illinois, New Mexico, and Bexar, in the center of which this village is, with no obstacles from rivers as far as Natchitoches when traveling eastward, while there is the advantage that to reach other localities situated to the west, north, and south the rivers oppose no obstacles, being near their heads. The advantages offered to new colonists are rendered obvious by the description above made of the climate, soil, waters, &c. He insists also upon the harvest to be made by an evangelical minister among these gentle and plain people, who have no special religion that may prevent them from admitting the true religion, much more so were he accompanied by some families of Tlaxcultecas, whose example would be useful in the foundation of one of the most opulent and useful settlements in these kingdoms.

Villages of San Bernardo and San Teodoro of the Taovayases, April 19, 1778.

537 No. 4. Two Englishmen introduced themselves into the vicinity of the Taovayases by the Arkansas River, which empties into the Mississippi and runs parallelly to that of Natchitoches, asking admission in their villages to trade and make friendship with them. The Taovayasses did not admit them. On the contrary, having been cautioned

by De Mesieres on his former visit, they violently took from them the goods they were carrying, giving them only the liberty of withdrawing. He praised highly their former action and censured the latter, telling them again that they were bad men, vagabonds, and our enemies, as was evidenced by the assistance they gave to the Osages, and therefore ought not only to be deprived of their goods, but arrested and notice of it given to De Mesieres, and should they present themselves hereafter arms should be resorted to against them in case of resistance. They promised to do so. Therefore he begs the commanding general to approve whatever serious determination the Taovayasas may take upon this subject agreeably to his persuasion, which is not dictated from private hatred, but from love to the country, in view of the pride, boldness, and wickedness of so pernicious foreigners, evidences of which they gave in Canada ever since its foundation until its last revolution and ruin. This first introduction of Englishmen took place at the close of the year 1777.

San Teodoro and San Bernardo, April 19, 1778.

No. 5. He asked the Taobayases to surrender the two bronze cannons which Colonel Don Diego Ortiz Parrilla abandoned in the fatal campaign which he undertook against them. It is their intention to haul them to Bucarely and thence to forward them to Bexar, whence they came.

San Teodoro and San Bernardo, April 19, 1778.

538 No. 6. De Mesieres found among the Taobayases ten Spaniards of New Mexico, prisoners bought from the Comanches. They are of both sexes and distinct ages and casts. They are well treated and hope for their freedom, owing to the friendship of their masters to us. He did not confer upon their ransom (which he does not believe to be expensive) without first consulting the commanding general, nor did he believe it to be opportune, as it might excite ill-will among the enemies and induce our friends to become greedy of odious lucre.

San Bernardo and San Teodoro, April 19, 1778.

No. 7. De Mesieres having been instructed to visit the Obage or Panis Mahas nation, who came down last year from the banks of the distant Missouri River, where they had their village, to join the Taobayases, regretted not to find them in their settlement. He found only a captain, nephew of the chief, with ten Indians, the others having gone to the N.W. to found a settlement, at a distance of sixty leagues from San Teodoro. He called and welcomed him, and, securing his confidence and friendship, and complained gently of the fickleness which induced his people to abandon a place where they might live quietly and in happiness under the powerful protection of the commanding general. The Indians understood these reasonable considerations and acknowledged their mistake, and promised to make up for it by bringing back his people and establishment of them in a fine locality designated by De Mesieres, where they might live not as guests, but as lords and owners of their lands and enjoy trade with us.

They will oppose the Osages, their enemies, without allowing to others a share in the laurels acquired by themselves with their own arms
539 and avail themselves of trade with us, to which traffic with the neighboring villages will be added. The Taobayases praised highly this determination, giving their word to the captain to look upon and assist him as a brother, and as an evidence of their good faith they

gave him two horses, that he might accelerate his journey, which he undertook at once.

The place where the Obages are to be established is at a distance of two and a half days' journey from the Taobayases, at the same distance from the Cadodachos, and is situated on the southern bank of the river that waters these two places and Natchitoches, whence (as it is navigable thus far) the goods needed by them will come by water, thus avoiding the cost, damages, and labor incident to transportation over land. Besides this advantage, by extending the cordon of friendly Indians against the Osagues, the hunters from Louisiana will be benefitted with the aid of our new settlers and the advantages offered by this opulent river, of which they are deprived owing to their well-grounded dread of the Osages.

The Obages or Mahas are docile, honest, and industrious, engaged in hunting and war, and indefatigable, as is shown by the laborious marches on foot in which they have been raised. The captain spoke a great deal to De Mesieres of the numerous nations that dwell in the vicinity of the Missouri River; also of another nation which has its home at a distance of "two moons," through rough roads to the WNW., and is seen at certain times by the natives who dwell there on a great lake of wholesome water, on which they navigate on boats with oars and sail. They wear heavy dresses; their arms are the gun and the sabre; they are swarthy (if his report deserves credence); they seem to be Asiatics, an observation which is so old and so often repeated that there is no doubt as to its truth and our neglect to go and see them.

San Teodoro, April 19, 1778.

540 No. 8. De Mesieres met at San Teodoro eight of the Comanches, who live on the bank of the Brazos River above the Tuacanas. They told him that a party of their people had a fight on the road from Bexar to Rio Grande, out of which they came without loss and with many horses and one scalp, which they said was that of the paymaster of Bexar, who, however, was to be at that time on the way to Saint Louis. They added that their robberies at Bexar and its missions had ceased because there was nothing left there to lay their hands upon, and the post is well defended, so they directed themselves to Laredo and surrounding ranchos that were well supplied; all of which leads De Mesieres to suppose that the Comanches are the authors of the death of Xeponneceno Travieso, a resident of Bexar, which had been attributed to the Apaches.

This news prevented him from going and see them, as he was unwilling to extend his hand to those whose hands were dyed in our blood; to avoid seeing their spoils, and not to offer them afriendship which they would attribute to fear; nor to threaten them, not to expose his small escort to insults from them.

However, he consulted with Taovayase chiefs, who approved his resolution to avail himself of the Comanche who had been a prisoner at Bexar, was attached to us, and was known to enjoy influence among his people, and send him to say to them that their robberies and hostilities had reached their highest point; that he (De Mesieres) was sent by the great captains of the internal provinces and Louisiana to offer them their protection, provided that they would desist their perverse practices and

become worthy of such benefaction; otherwise he would not conceal their conduct from the superior authority; that he was only awaiting
541 their final word, not frivolous, as has been so often their habits, but supported by experience and specially by deeds, such as surrendering the horses of which mention was made above; that they alone disturbed the peace of these territories; that the neighboring villages, mindful of their own preservation and enraged by their continual excesses, had their arms in hand, and that the commanding general, notwithstanding his kindness, could not but approve their making use of them unless he saw prompt and good proof of their repentance.

The Comanches left with these instructions with the greatest wishes for the success of his errand, although De Mesieres entertains little hope of a good result, for if the Comanches refused the satisfaction demanded of them, and he urged the Texas, Tancague, Tuacana, and Taovayase nations to avenge their own wrongs, as they wish and have manifested, they would be short of war supplies to inflict to them a violent blow that would punish those thieves and put an end to their rapines. Communication and trade would cease between them, and reciprocal hatred and hostilities would be increased, whilst at a slight expense from the royal exchequer—powder, balls, and arms—the sufferings of our soldiers and inhabitants might be avenged when the commanding general, now engaged on more important business, will make a serious resolve.

San Teodoro and San Bernardo, April 19, 1778.

No. 9. De Mesieres returned to Bucareli, where the only news he heard was that the Yaramane apostates had already left for their mission, except one man called Andres, who presented himself to him at the Quitrey village. He ordered two soldiers to put him on horseback and keep watch over him, a determination which was approved by the gentiles.

542 A daughter of that man, being absent, remained behind, but when she returns she will go and join her father, who was turned over to the judge of Bucareli, who will send them to their mission.

A man and a woman named Cayetano and Marcela are still wanting and will be arrested by the Taobayases, with several apostates who live among them and the San Pedro and Texas Indians, on which business he will insist until its conclusion.

Failing to meet the Tancaigues, who are continually scattered and roving, he ordered the traders to bring them before him at Natchitoches, where he will tell them that we have a full knowledge of their evil doings, resulting from their idleness and plundering expeditions, and did they immediately bring them to an end, form a village, and devote themselves to agriculture, trade and intercourse with them would cease and they would be exposed to starve or perish by the hands of their enemies.

Bucarely, May 2d, 1778.

543 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. the United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 2. Extracts from the reports and letters of Col. Anastacio de Mesieres, taken from books 27 & 28, general archives of Mexico. J. W. Harrison. Josiah M. Vale and Andrew A. Lipscomb,

attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun' 30, 1896, Court of Claims.

561 ["Letters and Notes on the Manners, Customs, and Condition of the North American Indians," by George Catlin, 2 vols., New York, Wiley and Putnam, 1844. Third edition.]

(Library of the Smithsonian Institution.)

EXTRACT FROM LETTER NO. 43, PAGE 70, VOL. II.

The above letter, it will be seen, was written some time ago, and when all hands (save those who were too sick) were on the start for the Pawnee village. Amongst those exceptions was I, before the hour of starting had arrived; and as the dragoons have made their visit there and returned in a most jaded condition, and I have again got well enough to write, I will render some account of the excursion, which is from the pen and pencil of my friend Joe (Chadwick), who went with them and took my sketch and note books in his pocket.

"We were four days travelling over a beautiful country, most of the way prairie, and generally along near the base of a stupendous range of mountains of reddish granite, in many places piled up to an immense height without tree or shrubbery on them, looking as if they had actually dropped from the clouds in such a confused mass, and all lay where they had fallen. Such we found the mountains enclosing the Pawnee village on the bank of the Red River, about ninety miles from the Camanchee town. The dragoon regiment was drawn up within half a mile or so of this village and encamped in a square, where we remained three days. We found here a very numerous village, containing some five or six hundred wigwams, all made of long prairie grass, thatched over poles, which are fastened in the ground and bent in at the top, giving
562 to them, in distance, the appearance of straw beehives, as in plate 173, which is an accurate view of it, showing the Red River in the front and the mountains of rock behind it.

"To our very great surprise, we found these people cultivating quite extensive fields of corn (maize), pumpkins, melons, beans, and squashes. So, with these aids and an abundant supply of buffalo meat, they may be said to be living very well.

"The next day after our arrival here Colonel Dodge opened a council with the chiefs, in the chief's lodge, where he had the most of his officers around him. He first explained the friendly views with which he came to see them and of the wish of the Government to establish a lasting peace with them, which they seemed at once to appreciate and highly to estimate."

EXTRACT FROM LETTER NO. 45, PAGE 82, VOL. II.

Since we came in from the prairies and the sickness has a little bated we have had a bustling time with the Indians at this place (Fort Gibson). Colonel Dodge sent runners to the chiefs of all the contiguous tribes of Indians with an invitation to meet the Pawnees, &c., in council at this place. Seven or eight tribes flocked to us in great numbers on the first day of the month, when the council commenced. It continued several days and gave these semicivilized sons of the forest a fair

opportunity of shaking the hands of their wild and untamed red
bretheren of the West—of embracing them in their arms with
563 expression of friendship and of smoking the calumet together, as
the solemn pledge of lasting peace and friendship.

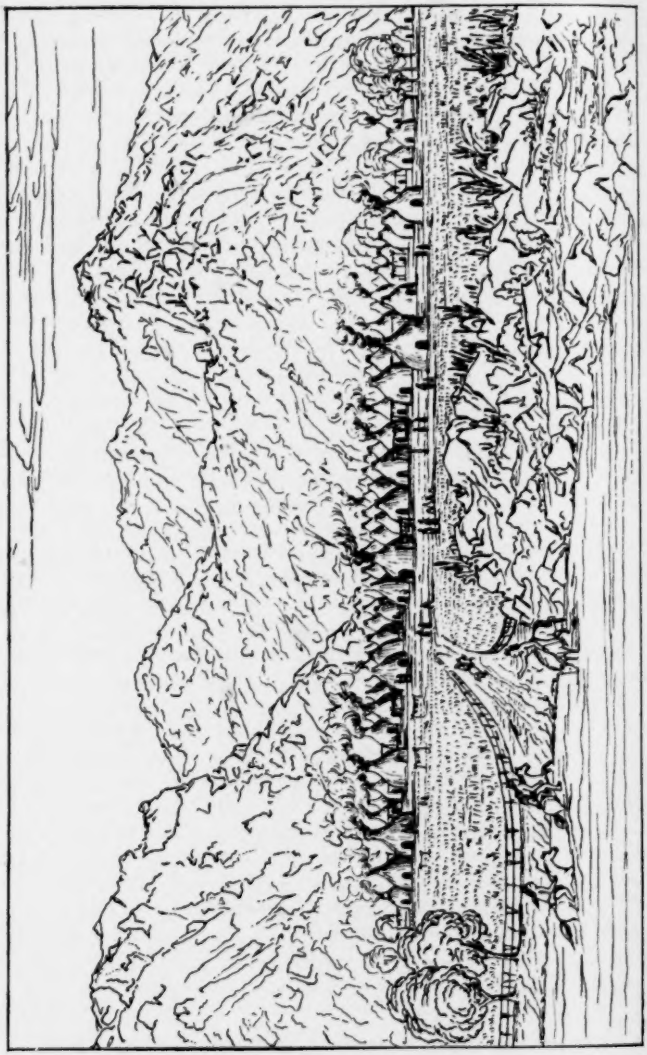
Colonel Dodge, Major Armstrong (the Indian agent), and General Stokes (the Indian commissioner) presided at this council, and I can not name a scene more interesting and entertaining than it was; where, for several days in succession, free vent was given to the feelings of men civilized, half-civilized, and wild; where the three stages of men were freely asserting their rights, their happiness, and friendship for each other. The vain orations of the half-polished (and half-breed) Cherokees and Choctaws, with all their finery and art, found their match in the brief and jarring gutterals of the wild and naked man.

After the council had adjourned, and the fumes of the peacemaking calumet had vanished away, and Colonel Dodge had made them additional presents, they soon made preparations for their departure, and on the next day started, with an escort of dragoons, for their own country. This movement is much to be regretted, for it would have been exceedingly gratifying to the people of the East to have seen so wild a group, and it would have been a great service to them to have visited Washington—a journey, though, which they could not be prevailed upon to make.

564 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation *v.* The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 6. Extracts from Catlin's "Manners, Customs, and Condition of the North American Indians." S. G. Hopkins. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun' 30, 1896. Court of Claims.

565 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation *v.* The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 7. Wichita village, on the Red R., 1834. Fig. 173, in Catlin's Manners and Customs of the North American Indians. S. G. Hopkins. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun' 30, 1896. Court of Claims.

(Here follows picture marked p. 566.)



Copy of figure 173, Catlin's Manners and Customs of the North American Indians. "Wichita village on the North Fork of the Red River."

567 [Extracts from "Commerce of the Prairies, by Josiah Gregg, 2 vols., New York, 1844."]

(Library of the Bureau of American Ethnology.)

(Vol. II, p. 9.) An unconquerable propensity to return to prairie life inclined me to embark in a fresh enterprise. The blockade of the Mexi-

an ports by the French also offered strong inducements for undertaking
uch an expedition in the spring of 1839.

(P. 17–18.) We had just reached the extreme edge of the far-famed "Cross-Timbers" when we were gratified by the arrival of forty dragoons, under the command of Lieut. Bowman, who had orders to accompany us o the supposed boundary of the United States. On the same evening ve had the pleasure of encamping together at a place known as Camp Holmes, a wild, romantic spot in latitude 35° 5′, and but a mile north of the Canadian River. Just at hand there was a beautiful spring, where, in 1835, Colonel Mason, with a force of U. S. troops, had a "big talk" and still bigger "smoke" with a party of Comanche and Wichita Indians. Upon the same site Col. Chouteau had also caused to be erected, not long after, a little stockade fort, where a considerable trade was subsequently carried on with the Comanches and other tribes of the southwestern prairies. The place had now been abandoned, however, since the preceding winter.

From the Arkansas River to Chouteau's Fort our route pre-
568 sented an unbroken succession of grassy plains and fertile glades, intersected here and there with woody belts and numerous rivulets, most of which, however, are generally dry except during the rainy season. As far as Camp Holmes we had a passable wagon road, which was opened upon the occasion of the Indian treaty before alluded to, and was afterwards kept open by the Indian traders.

(P. 19.) We were now about to launch upon an unknown region; our route lay henceforth across that unexplored wilderness of which I have so frequently spoken, without either pilot or trail to guide us for nearly 500 miles. We had to depend entirely upon our knowledge of the geographical position of the country for which we were steering, and the indications of a compass and sextant. This was emphatically a pioneer trip; such a one also as had, perhaps, never before been undertaken—to convey heavily laden wagons through a country almost wholly untrod by civilized man, and of which we, at least, knew nothing.

(P. 153.) As the forest of Cross Timbers was now beginning to be seen in the distance, and fearing we might be troubled to find a pass way through this brushy region south of the Canadian, we forded this river on the 29th, without the slightest trouble, and very soon entered our former trail, a little west of Spring Valley.

569 (Pp. 179–180.) If we look at the great western prairies independently of the political powers to which portions of them respectively belong, we shall find them occupying the whole of that extensive territory lying between the spurs of the Rocky Mountains on the north and the rivers of Texas on the south—a distance of some seven or eight hundred miles in one direction; and from the frontiers of Missouri and Arkansas on the east to the eastern branches of the southern Rocky Mountains on the west—about six hundred miles in the transverse direction; the whole comprising an area of about 400,000 square miles, some 30,000 of which are within the original limits of Texas, and 70,000 in those of New Mexico (if we extend them east to the United States boundary), leaving about 300,000 in the territory of the United States.

This vast territory is not interrupted by any important mountainous elevations except along the borders of the great western Sierras, and by

some low, craggy ridges about the Arkansas frontier—skirts of the Ozark Mountains. There is, it is true, high on the dividing ridge between Red River and the False Washita, a range of hills, the southwestern portion of which extends about to the 100th degree of longitude west from Greenwich; that is, to the United States boundary line. These are generally called the Witchita Mountains, but sometimes Towyash by hunters, perhaps from toyavist, the Comanche word for mountain. I inquired once of a Comanche Indian how his nation designated this range of mountains,
which was then in sight of us. He answered, "Toyavist." "But
570 this simply means a mountain," I replied. "How do you distinguish this from any other mountain?" "There are no other mountains in the Comanche territory," he rejoined; "none till we go east to your country, or south to Texas, or west to the land of the Mexican."

(Pp. 199–201.) The celebrated Cross Timbers, of which frequent mention has been made, extend from the Brazos, or perhaps from the Colorado of Texas, across the sources of Trinity, traversing Red River above the False Washita, and thence west of north to the Red Fork of Arkansas, if not further. It is a rough, hilly range of country, and, though not mountainous, may perhaps be considered a prolongation of that chain of low mountains which pass to the northward of Bexar and Austin City, in Texas.

The Cross Timbers vary in width from five to thirty miles, and entirely cut off the communication betwixt the interior prairies and those of the great plains. They may be considered as the "fringe" of the great prairies, being a continuous brushy strip composed of various kinds of undergrowth, such as black-jacks, post oaks, and in some places hickory, elm, etc., intermixed with a very diminutive dwaft oak, called by the hunters "shin oak." Most of the timber appears to be kept small by the con-
tinual inroads of the "burning prairies;" for, being killed almost
571 annually, it is constantly replaced by scions of undergrowth, so that it becomes more and more dense every reproduction. In some places, however, the oaks are of considerable size, and able to withstand the conflagrations. The underwood is so matted in many places with grapevines, green briars, etc., as to form almost impenetrable "roughs," which serve as hiding places for wild beasts, as well as wild Indians, and would, in savage warfare, prove almost as formidable as the hammocks of Florida.

South of the Canadian a branch of these Cross Timbers projects off westward, and afterwards cross the stream; and, having continued up for a hundred miles, it inclines northwest beyond the North Fork, and ultimately ceases, no doubt, in the great sandy plains in that direction.

The region of the Cross Timbers is generally well watered, and is interspersed with romantic and fertile tracts. The bottoms of the tributaries of Red River, even for some distance west of the Cross Timbers (perhaps almost to the U. S. boundary), are mostly very fertile, and timbered with narrow stripes of elm, hackberry, walnut, hickory, mul-
berry, bur oak, and other rich growths.

572 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. the United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 9. Extracts from Gregg's Commerce of the Prairies, Vol. II. S. G. Hopkins, Josiah M. Vale, and Andrew A.

Lipscomb, attorneys for said defendants. Philip Walker and William C. Shelley, counsel. Filed Jun' 30, 1896. Court of Claims.

573 [Extract from "The Pawnee Indian; a Sketch," by John H. Dunbar. Reprinted from the Magazine of American History, April, 1880.]

(Library of the Bureau of Ethnology.)

"The traditions of three of the bands, the Xau'-i, the Kit'-ke-hak-i, and Pit-a-hau-e-rat, coincide in stating that the Pawnees migrated to the Platte River region from the south, and secured possession of it by conquest. The period of 'his migration is so remote that they have failed to retain any of its details, except in a very confused form. The language affords some evidence that their residence in the valley of the Platte has been of some duration. O-kut-ut and Oku-kat signify, strictly, above and below (of a stream), respectively. Now, their villages have usually been situated upon the banks of the Platte, the general course of which is from west to east. Hence, each of these words has acquired a new meaning, i. e., west and east. So, also, Kir-i-ku-ruks-tu, toward or with the Wichitas, has come to mean south. Such developments are perfectly natural in the history of a language, but require time. The Wichitas, I am told, have a tradition that the primitive home of themselves and the Pawnees was upon the Red River, below the mouth of the Wichita. This would place them in close proximity with the Caddos. The Wichitas also attempt to explain their own southern position by alleging that, having had reason to be dissatisfied with the migration or its results, they attempted to return to their old home. The

Pawnees also state that the Wichitas accompanied them on the
574 migration, but left them long ago and wandered away to the south, though silent as to the reason. This much may be safely claimed, that the separation must have occurred long since, as is indicated particularly by the marked diversion of the Wichita dialect. There are certain facts which may be referred to here as affording something of vraisemblance to the tradition of this migratory movement from the south: 1. The Pawnee has always been remarked among the northern tribes for his fondness for and skill in the use of horses. It was a great ambition with each of them to be the owner of a drove of them. His wealth and, to some extent, his social standing were determined by the number he possessed. For the increasing of his stock he made frequent predatory incursions upon neighboring tribes, especially upon those toward the south, and sometimes these expeditions were extended to a great distance. Personal names were often derived from successful exploits of this kind. 2. The Pawnee warrior always preferred a bow of bois d'arc, and besides the bow in actual use, he would often have in his lodge a stock of the same material, which at his leisure he would be working into shape as a provision against possible exigency. Bows of this wood were rarely traded away. Bois d'arc, however, was to be obtained only in the south, and for the purpose of procuring it a sort of commerce was kept up with certain tribes living there. Now, in both

these respects, his fondness for horses and his preference for the
575 bois d'arc, the Pawnee is remarkably at one with the tribes of the southern plains, and though they may not be cited as proof of his

southern origin, they are at least indications. The Pawnee usually locates the Mississippi to the southeast and the sea to the south. This is perfectly natural if his present indistinct knowledge of them is the remnant of a more intimate acquaintance that he once possessed in the south.

"The original inhabitants of the conquered territory, the three bands already named, claim to have been the Otoes, Poncas, Omahas, and Ski-di. It is in the subjugation of these tribes that the Pawnee finds his heroic age. The tradition is that the Otoes and Omahas were entirely expelled from the country, but, after a long absence to the northward, returned, or rather were driven back by the Dakotas, and were allowed by sufferance to occupy lands adjacent to the Missouri, as the Poncas had continued to do since the first conquest. From that time they have remained wards of the Pawnees. This much at least is true: The Pawnee always spoke of the Otoes, Poncas, and Omahas as subjugated tribes and when together in council, on war or hunting expeditions, though generally acknowledging their prowess, especially that of the two former, he still treated them as dependants, and in times of impending danger from the common foe, the Dakotas, they uniformly looked to him for succor."

576 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 12. Extract from "The Pawnee Indian; Sketch," by John H. Dunbar. S. G. Hopkins. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun. 30, 1896. Court of Claims.

577 MIGRATION OF THE WICHITA INDIANS, BY ALBERT S. GATSCHET

[From American Antiquarian, September, 1891.]

(In the Library of the Bureau of Ethnology.)

At a council of the Witchita people, held on the Washita River, May 19, 1885, Chief Niastor, of the Tawakoni Indians, made the following statements:

When the Wichita Indians lived on the Arkansas River other Indians crowded upon them from the north and east, and, after a fight, drove them southward. The chief of the Wichitas at that time was Todekisadie. He said that for times immemorial his people had lived in the same country, and was driven from it only through the onset of the Indians above mentioned. In a council it was decided to send a party of explorers to look out for a new tract to settle upon. The selected party went southwest, and when it struck the Wichita Mountains the surrounding country pleased them so that they decided to report in favor of going there. After their return a council was called, and the party of explorers pleaded for emigration to that portion of land. The removal was decided upon, and as horses were then unknown, the whole people, which was then very numerous, had to walk the distance on foot. Arriving from their villages upon the Arkansas River at the banks of the North Canadian River, they followed it upstream and arrived at the bend

of the river, at the Red Sand Hills. There they stopped, built
578 lodges, and sowed their corn. From this location a part of the Wichitas were called Tawakoni, for this Wichita word signifies "river bend among red or sand hills." Having lived there several years, they felt a desire to remove, and led by Todekitsadie they started for the Wichita Mountains, supposing that the soil there was better adapted for raising Indian corn. After the Wichitas had settled there, Todekitsadie died. Niastor also made the additional statement, obtained from his mother, that after leaving the Red Sand Hills on the Canadian River they did not travel directly to the Wichita Mountains, but remained a few years north of the (False) Washita River, set up farms near the mouth of Sugar Creek (north of Anadarko), and were forced from there only through a general inundation, which flooded all the lands around the Washita, of which Sugar Creek is a tributary, joining it from the north near the agency buildings. They then fled to the Wichita Mountains, and this occurred in the time of Niastor's grandfather. Niastor was born there in 1837, near Mount Scott, and his mother was also born in the Wichita Mountains; but the earlier emigration of the people from the Arkansas River took place at the time of his great-grandfather. The tract where their villages then stood was in the neighborhood of Wichita City, Sedgwick County, southern Kansas, and flint heads, with pottery, are now found at their former settlements. To this abstract of the tradition I add the deposition made by Niastor in its original terms, since many points are made more clear by it. I have received this document through the kindness of Mr. H. Kuhn, clerk of the Comanche, Kiowa, and Wichita Agency, under date of August 23, 1885.

579 At a council of the Wichitas, May 19, 1885, Niastor, chief of the Tawakonie, said: "My mother told me that her father said she was born on the Arkansas River, below where the town of Wichita now is, and where there were holes in the ground in which could be found flint heads for arrows and also pottery, near where the Osage country now is. My great-grandfather told my mother that when the Wichitas lived on the Arkansas River the Indians from the north and east crowded and fought them, and drove them this way; that at that time To-de-kits-a-die (meaning 'boy chief') was the chief of the Wichitas. He told my mother that our people had always lived there, but after the Indians fought them our people held a council and concluded to move away from there. Some of our people were selected to go and look out for a country. The party selected went southwest until they saw the mountains now called Wichita Mountains, and liked the country very much. They returned to the village, and then our chief men called a council and heard what the returned party said about the land they had seen, that it pleased them, and that they wanted all of our people to go there. At that time there were a great many Wichitas, and our people had never seen any horses (there were none in the country), and when our people left their villages on the Arkansas River to go south they all had to walk. When they arrived at the North Canadian they traveled up that river till they came to the Red Sand Hills in the bend of the river, where they made villages and raised corn. It was there that some of our people were first called 'To-wa-co-nies,' because they lived in sand hills in the bend of the river. To-wa-co-nie is a Wichita

580 Indian word, meaning 'bend in the river among red hills or sand hills.' Our people, after living there some years raising corn, got tired, and the 'boy chief' (To-de-kits-a-die) told them that they would all go to the Wichita Mountains, which was a better country for raising corn. To-de-kits-a-die died after our people had settled in the Wichita Mountains.

"I forgot to tell you that my mother told me when the Wichitas moved from the Red Hills, on the Canadian River, they remained for some years north of the Washita River and made farms near the mouth of Sugar Creek, and while they lived on the Washita there was a big freshet, which covered all the bottoms and flooded the whole country, after which our people moved to the Wichita Mountains. This was during the lifetime of my grandfather, and my mother was born in the Wichita Mountains. I am now forty-eight years old, and was born near Mount Scott. My mother was very old when she died, thirteen years ago. She was much older than Es-quit-cho is now.

"The Wichitas a long time ago were called Pawnee Picques, but our people did not call themselves by that name, and I do not know why we were called by that name.

"NI-AS-TOR (his x mark),
"*Chief of the Towaconie.*"

Witness:
(Signed) E. B. TOWNSEND.

581 For a better understanding of the relations among the Pani tribes in the Indian Territory it will be well to consider that the name Wichita represents a tribe as well as a clan of that tribe. The Wichita tribe had the following seven clans, as ascertained by Rev. Owen J. Dorsey, in 1881, from a Tawakoni man called Na-ashtuwi, who is probably identical with our Niastor:

1. Witchita. 2. Towakarehu. 3. Wee-ko (Weko, Waco, Hueco). 4. Akwetch. 5. Sidahetch. 6. Kishkat. 7. Kirieshkitsu.

Here the difficulty is to find out whether these names represent originally different tribes who became the allies of the Wichita, or totemic gentes, into which the main stock of the Wichita had gradually diverged. The language of the Towakarehu or Towakoni is about identical with that of the Wichita, but that of the Weko shows more disparity.

The name by which the Wichita originally called themselves was Tawayash, Tawaihash; also spelled Towiache, Towache, Toayas, Toweeash. Their present appellation, Wichita, which they apply to themselves, is thought to be of Osage origin, and to mean "migrating," "removing."

The other name, as mentioned by Niastor, is French, and should read Pawnees Piques (not Picques), that is, the tatto'ed Pawnees. Another appellation—Pawnee Picts—smacks of book learning, for it is taken from the Scotch tribe of the Picti or "tatto'ed," so called by a Latin term at the time of the Romans. The third name mentioned by Niastor as applied to the Wichita Indians—Kitikades, or "Painted Eyelids," as he renders it—is the name given to them by the Pawnees proper, and is pronounced Kirikurus or Kidikurus.

582 James H. Deer, a Caddo interpreter, consulted by me in 1886, during his presence in Washington, D. C., agreed with the state-

ment given above, that Wichita was an Osage term, signifying "moving about," and as to the name Tawakoni, he heard from the Wichita that it belonged to their language and signified "sand-hill bend." The Wacos, another cognate tribe, now count only seventy people, and their name means "migrating" in Wichita, by which, he said, their travels or raids into Mexico are referred to. The Red Sand Hills, above mentioned, are now known as the Red Hills, and lie on the banks of the North Canadian within the Cheyenne and Arapahoe Reservation, ten miles above Darlington, Indian Territory.

The remnants of all these tribes have been gathered for the last twenty years or more in the Indian Territory, north of the Washita River, and in 1889 showed the following population: Wichita Indians 176, Tawakoni 145, Waco 64, Kichai 63, Caddo 539; total 987.

583 (Indorsed:) U. S. Court of Claims, No. 18932. The Choctaw Nation and The Chickasaw Nation v. The United States and The Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 13. Migration of the Wichita Indians, by Albert S. Gatschet, from the American Antiquarian, Sept., 1891. S. G. Hopkins. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants. Philip Walker and William C. Shelley, counsel. Filed Jun' 30, 1896. Court of Claims.

(Here follows map, marked p. 584.)

586 THE ARCANCAS POST.

[Historical Memoires of M. Dumont in French's Historical Memoires of Louisiana, Part V, New York, 1853, pages 34-6.]

(Library of the Bureau of Ethnology.)

This post is properly only a continuation of the establishment formed by the French around the house which Joutel and his companions reached in the month of July, 1687, and where, before arriving, they perceived a cross planted, which consoled them in their pains and hardships. From that time to the present the nation has always remained in possession of that territory; and when M. le Blanc sent men to take possession of the grant made him on the Yazoux River, a hundred and forty leagues from the capital, the little garrison, kept till then by the company at that place, retired to the Arcancas post, then commanded by the Sieur de la Boulaye. There is no fort in the place, only four or five palisade houses, a little guardhouse, and a cabin, which serves as a storehouse. This French post was established as a stopping place for those going from the capital to Illinois.

* * * * * * *

In 1721, some visionaries having assured the company that there was an emerald rock on the Arcancas River, Captain de la Harpe was sent to look for it. He had with him a detachment of twenty-two men, with the Sieur de Franchomme as lieutenant, and one Bessan for sergeant, and, as I was then at the Yasoux as lieutenant and engineer, he took me along as mathematician. We ascended the river for more than two
587 hundred and fifty leagues without being able to discover this pretended treasure, probably because it existed only in imagination; we even advanced nearly fifty leagues further by land into the

country, till, complaints arising in the troop, the Sieur de la Harpe, who apprehended a fate similar to La Salle's, resolved to retrace his steps and return to the capital. If, in this expedition, we had not the good fortune to discover the emerald rock, which gave it rise, we had the satisfaction of traversing a very beautiful country, fertile plains, vast prairies covered with buffalo, stags, does, deer, turtles, etc. We saw rocks of jasper marble, at the foot of which lay slabs cut by nature's hand, other of slate and talc, very fit for making plaster. I have no doubt there are gold mines in the country, as we discovered a little stream which rolled gold dust in its waters. At some distance from this stream in the Arcancas River itself is a salt spring, though it is nearly three hundred leagues from the sea. With care and labor it would undoubtedly furnish salt.

588 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 16. "The Arcancas Post." Extracts from French's Historical Memoires of Louisiana, Part V. S. G. Hopkins, Josiah M. Vale, and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun. 30, 1896, Court of Claims.

589 EXTRACT FROM THE EXPEDITIONS OF ZEBULON MONTGOMERY PIKE, BY ELLIOTT COUES, NEW YORK, 1895, VOL. II, P. 560. (NOTE.)

(Library of the U. S. Geological Survey.)

Arkansas Post perpetuates the name of the oldest establishment of whites in the Lower Mississippi Valley. The present village is on the N. bank of the Arkansaw R., in the county and State of Arkansas, 73 m. SE. of Little Rock, the capital. Though never a locality of much importance, its place in history is secure and permanent. Early in the year 1685, Henri de Tonti, the famous trusty lieutenant of La Salle, was reinstated in command of Fort St. Louis of the Illinois, with titles of captain and governor, by order of the French king Louis XIV. Tonti learned that La Salle was in trouble somewhere in New Spain (Texas), and organized an expedition for his relief. On Feb. 16th, 1686, he left Fort St. Louis with 30 Frenchmen and 5 Indians, descended the Illinois and Miss. rivers to the Gulf, and scoured the coast for miles, but saw no sign of his great chief. He wrote a letter for La Salle, which he committed to the care of a chief of the Quinipissas for delivery, should opportunity offer, and retraced his way up the Miss. R. to the mouth of the Arkansaw, which latter river he ascended to the village of the Arkensa Indians. There, on lands which La Salle had already granted him, he stationed six of his men, who volunteered to remain in hopes of hearing from the distant commander. This was the origin of the Post aux Arkan-

590 sas. La Salle was murdered by the traitor Duhaut, one of several ruffians among his own men who conspired to his foul assassination, some say on one of the tributaries of the Brazos, at a spot which has been supposed to be perhaps 40–50 m. N. of present town of Washington, Tex.; the date is March 19th or 20th, 1687. Seven of the survivors of La Salle's ill-starred colony at Fort St. Louis of Texas reached Arkansas Post after a journey computed at the time to have been

250 leagues, in the summer of 1687, and found Couture and De Launay, two of the six whom Tonti had stationed there the year before. (See Wallace, Hist. Ill. and La., etc., 1893.) This Tonti (or Tonty), b. about 1650, died at Mobile, 1704, was the son of Lorenzo Tonti, who devised the Tontine scheme or policy of insurance. Arkansas Post was the scene of Laclede's death, June 20th, 1778. The place was taken by the Unionists from the Confederates Jan. 11th, 1863.

591 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 17. "Arkansas Post." Note from Coues' "Expeditions of Z. M. Pike." S. G. Hopkins, Josiah M. Vale, and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun. 30, 1896. Court of Claims.

592 TRANSLATED FROM HISTORY OF LOUISIANA, LE PAGE DUPRATZ, 3 VOLS., PARIS, 1758.

[Library of the Bureau of Ethnology.]

(Vol. I, page 6.) When he (La Salle) had given M. Colbert an account of his voyage, this great minister, who knew of what importance it would be to the State to be assured of so fine and large a country, did not hesitate to give him a vessel and a small frigate to go to explore the Gulf of Mexico and the mouths of the St. Louis River (Mississippi). He departed in 1685. But the observations which he had taken had, without doubt, not the exactness necessary, so that when he reached the gulf he passed the river, going too much towards the west, and entered the Bay of Saint Bernard. Some misunderstanding existing between him and the officers of his vessels, he disembarked with the party that was under his orders, and having established a post in this place, he set out overland to find the great river. But after having marched several days, some of his people, being much irritated against him on account of the labor to which he had put them, profited by a time when he was with them away from his troup, and dishonorably assassinated him. The troup, although deprived of its chief, continued on its route, traversed a great number of rivers, and finally arrived at that of the Arkansas, where they found, contrary to all expectation, a newly established French post. The Chevalier de Tonti had descended from the fort of the Illinois to the mouth of the river (Mississippi) about the time that he expected M. de la Salle to arrive by sea. Not having found him he returned up the river to reach his post, and having entered on the way into the river of the Arkansas as far as the village of that nation,

593 made an alliance with them, some of these people begging him to establish himself with them, which he did. He left ten men there, and this small house was sustained and fortified.

* * * * * * *

(Vol. I, page 150.) The river of the Arkansas, which is thirty-five leagues below (the St. Francis) and two hundred from New Orleans, is so named because of the nation of Indians who live upon its borders a little above its confluence with the (Mississippi) River.

* * * * * * *

(Vol. I, page 152.) About ten leagues from its (the Red River's) mouth it receives the Black River or the river of the Ouachitas, which takes its source rather near that of the Arkansas. This source, they say, forks near its origin, one branch forming the Arkansas and the larger branch forming the Black River.

* * * * * * *

(Vol. II, page 242.) From the Red River to the Arkansas there is no nation. There was one on the Black River; this was the Ouachitas, who have given their name to that river. At present there remains nothing of this nation, the Tchicachas having destroyed the greater part, and the rest having retired to the Cadoaquioux, where the Tchicachas do not dare to molest them.

* * * * * * *

(Vol. II, page 243.) Four leagues from the mouth of the Arkansas River and on its banks resides the nation which has given it its name. This nation is rather strong. The savages are as good warriors as they are able hunters. The Tchicachas, always unquiet, have wished to prove the bravery of the former, but they have found them so
594 firm that they have not thought it proper to continue to know their valor, especially since their Kappas and a part of the Illinois have retired among them, as have the Mitchgamias. So there is no more mention of the Kappas and the Mitchigamias, since they retired among the Arkansas, who have adopted them, all together now making but one nation.

595 (Indorsed:) U. S. Court of Claims, No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 18. Extracts translated from the French of Le Page du Pratz, History of Louisiana. S. G. Hopkins. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants. Philip Walker and William C. Shelley, counsel. Filed June 30, 1896. Court of Claims.

596 DEPOSITIONS TAKEN IN "THE GREER COUNCY CASE," ENTITLED "THE UNITED STATES vs. THE STATE OF TEXAS," BEING ORIGINAL NO. 4, OCTOBER TERM, 1894, SUPREME COURT OF THE UNITED STATES, AND EXTRACTED FROM THE RECORD THEREIN

597 [Extracts from the depositions taken in the Greer County Case, U. S. *v.* Texas, Supreme Court, U. S.]

J. J. Sturm (*p. 605, record*).

"In August, 1857, we came from Texas; arrived on 20th day of August, 1857, with a portion of the Indians that are living here. The Wichitas had been living in the Chickasaw country since Van Dorn's fight on Rush Creek, when they abandoned their village there. A portion of the Caddos came from the Choctaw Nation and joined those who had come from Texas. I should have said living in the Choctaw and Chickasaw. There were some living in each nation."

"The Wacoes and Towakanees came from the Brazos Reservation in Texas, and a small number of Keechis. They were moved in 1857 to

this reservation. The Wichitas were ordered here to meet us and they had already moved up on the Washita on this reservation, about twelve miles below here (Anadarko), when we got here."

Bull Wilson, Delaware (p. 619).

"I came from Texas. I was quite a young man when I first came to this country; all these Delawares—they all came from Texas."

598 *Deposition of James Mooney (p. 665 to p. 673).*

Whereupon James Mooney, having been first duly sworn, testified as follows:

Direct examination by Mr. ALLEN:

1. Q. What is your age, residence, and occupation?

A. My age is thirty-three; headquarters, Washington; ethnologist in the United States Bureau of Ethnology.

2. Q. How long have you been employed in that department of the Government?

A. Nine years.

3. Q. For how long a period have you made the question of the manners, customs, and tradition of the various Indian tribes in the northwestern portion of the United States a matter of study?

A. My work more or less takes notice of all the tribes of North and South America. I have been giving attention to that subject for twenty years. Most of my attention during that time has been given to the tribes within the United States or north of the United States.

4. Q. For how long a period have you been familiar by study or experience with the manners, customs, and modes of living of the Kiowa, Comanches, Wichitas, Caddo, and Delaware tribes of Indians?

A. My general study of those tribes is included with the study of the other tribes for the same period named. The special study is for the term of about five years past with regard to those particular tribes.

599 5. Q. Have you within a recent period visited the Red River country with a view of examining any particular locality touching the origin of the remains of former habitation found in that region?

A. Yes, sir.

6. Q. When did you go and to what particular section of country?

A. Since 1890 I have made, perhaps, five or six visits to the Kiowa and Comanche reservation, and in last October, 1893, I visited the upper region of Red River and adjoining the reservation.

7. Q. Did you, on the occasion of your trip in October last, see the alleged sites of any old Spanish settlements in the neighborhood of the Wichita Mountains? If so, describe, as nearly as you can, their location.

A. I saw a location there on upper Red River that had been said by some persons in that part of the country to be the remains of Mexican or Spanish settlement sites. As nearly as I can remember, the particular places or the largest apparent settlement site was about fifteen miles from Navajoe, in Greer County, on the northeast bank of North Fork.

8. Q. Of Red River?

A. Of Red River; with the Greer County side—low country on one side of the river and the Wichita Mountains backed up close against the stream on the other side—on the reservation side.

* * * * * * *

600 9. Q. Who accompanied you on this expedition?

A. I had a boy as driver. I do not remember his name. I had Mr. Passmore—I think John Passmore—Mr. Blalock, both, I think, of Navajo, in Greer County.

10. Q. Do you know the location of the Devils Canon?

A. Yes.

11. Q. How near to the Devils Canon was the location to which you have referred?

A. One end of it is immediately at the mouth of the canon. The other remains around the spur of the mountain, very near to the same place.

12. Q. Now, if you please, describe all the evidences of former habitation discovered by you in that locality. I am asking you to tell me only what you discovered.

A. I have said that one part of the old settlement remains was immediately at the mouth of the canon, and the other portion some little distance further down on the same side of the North Fork. From the head to the mouth is down the stream. It is nearer to the mouth—that is, it would be nearer, I believe, as the stream runs, there. It would be southeast of the mouth of the canon. There was a piece of level ground of several acres, I do not know how much, and in that piece of ground it was almost entirely bare of timber. Between the stream and the mountain I found the remains—I found a number of circular depressions, perhaps—well, maybe forty or fifty, and they were all of pretty uniform size. I should judge now, without my notes, that they were about forty or fifty feet in diameter on an average. They were usually about

601 two or three feet below the general surface, and around the outside edge there was a slight elevation of earth. Then in the immediate neighborhood, in searching around, I found among other things a cleft in the rock right in the side of a ridge and that was partly filled with some kind of dust. I took some of that dust with me and brought it back to Washington and had it examined to see what it was; then, going further around toward the canon, we came to another space pretty nearly bare of timber and running up to some small brushwood. On that bare place we found scattered about a number of large metate stones. Metate is the name given by the Mexicans to the rudely shaped stones upon which they grind their corn. Stones of somewhat similar pattern are used by the Pueblo Indian tribes generally, and by Navajoes. I have seen them used among those tribes. These metate stones were all rudely shaped. They were made of a rough, granular, reddish sandstone, with a slight depression in the top which had been worn from use. We also found there one or two fragments of the grinding stone that are used for rolling out bread. I sent, I think, two of those metates to Washington, and I suppose they are now in the National Museum. I also brought back, and have in the bureau in my room, a fragment of metate—perhaps two. I also found a stone hatchet and an iron arrow-head. I also found a piece of iron tube which my companion said was a fragment of gun barrel. In this same clear space, near the mouth of the canon, we found a number of places, of perhaps eight or ten feet across, of an approximately square or rectangular shape. In th

602 places the earth had been depressed and there were a number of boulders scattered about of the general sandstone of the mountai

adjoining and a great many bones. All of the larger bones that I examined had been split to pieces. I took back some of the bones and have them now in the bureau. I have not tried to find out what kind of bones they are, of what animal, or whether they are human bones. On the edge of the clear space, close along the side of the mountain, there is a small ravine, and on one side of the ravine there is higher ground than on the adjoining level, and along there I found a number of small circular depressions resembling very much the remains of wells that had been partially filled in and left to fall into disorder. I do not recollect just now of anything else of importance that we found there.

13. Q. Did you find any vessels or utensils of any kind during your search?

A. I might add—I do not think that we did. No; I did not. We did not find any vessels at all. I believe that I found one small piece of what seemed to be a piece of china plate—that is, an ordinary earthern plate of white ware. That is the only thing of that kind that I found according to my recollection, and in making this search I went over all the ground pretty carefully around what was the settlement site, apparently, and spent a portion of two days in the search. We dug into the bone pits to find what might be there and went through a number of the depressions that I have first mentioned—those large circular depressions; went over the clear ground and hunted around in the underbrush.

603 14. Q. From your knowledge and experience of the Indian tribes, their manners, customs, habits, and modes of life, could you reach any intelligent conclusion as to the most probable origin of the old settlements you have just described?

A. I have an explanation which is, I think, correct, from my own knowledge of Indians and from what those particular tribes in that neighborhood have told me of their old habits.

* * * * * * *

15. Q. Did you notice whether the circular depression showed any evidence of having at one time had openings in the circle?

A. It would be difficult to say, positively, as to that. They were overgrown with grass.

16. Q. Was there any evidence of fires ever having burned in any of them?

A. Yes; we found ashes and coals in some of them.

17. Q. State, from your own knowledge solely, what conclusion, if any, you formed as to the origin of these old sites.

A. With regard to the large circular depressions, they look like the remains of the circular earth lodges, as they are called, built and occupied in former times by a number of the prairie tribes in the West, and still occupied, as I have seen them, by Omahas, Pawnees, and several other tribes.

18. Q. Of what general Indian tribe was the Pawnee a branch?

604 A. They are a part of the same stock as the Wichitas and Caddoes. They are the northern emigration of the Caddoes and Wichitas, whose principal home was and is along Red River.

19. Q. Do you know of any tribe of Indians located or roaming over that section of country in past years who were known or are known to-day as having been in any degree agricultural in their pursuits?

A. All the tribes relating to the Caddoes, Wichitas, and Pawnees were, and, I believe, still are, agricultural.

20. Q. Have you any personal knowledge of their methods of preserving for winter or for future use their agricultural products?

A. One of their methods is to dry their corn, pumpkins, and some other things that can be dried that they raise, and hang them up within their lodges or in small houses for that particular purpose. That is personal knowledge of to-day among those tribes in that section. Formerly, within the last twenty years and before that time, when they were at war with various tribes around them, they and those other tribes about them say that they would preserve their corn frequently in caches in the ground. They have described to me how these caches were built, and I have seen similar caches in use very recently among the Navajoes for the same purpose.

21. Q. Do you know of any habit among the Indians which would account for the discovery you made as to the large bones being invariably split open?

605 A. It is a common custom with Indian tribes, and more particularly with the prairie tribes, to split open the larger bones to get at the marrow. I have seen that done in camp.

22. Q. To whom did you turn over the material found by you in the cave or canyon?

A. All those things are the property now of the Bureau of Ethnology—all the things found on that exploration. The dust or powder found in the cave I submitted to Dr. Diller.

23. Q. Give his full name, please.

A. Joseph S. Diller, Geological Survey. I turned it over to Dr. Diller, of the Geological Survey, for examination. He made a microscopic and chemical examination of it.

24. Q. What are the habits of the Wichita Indians in regard to their habitations in different seasons of the year?

A. They are beginning now to be affected by civilization in habit, but the majority of them, I believe, still live in tepees in the winter and in grass houses in the summer time, and they have still among them one or two earth lodges. By "earth lodges" (that was the common term used) I mean circular lodges of logs covered with earth and with earth banked up around the outside near the ground.

25. Q. Please describe what you mean by tepees and grass houses, respectively.

A. A tepee is the Sioux word which is now used throughout the plains for the conical lodges of the nomadic tribes. These lodges were

606 formerly made of buffalo skins stretched over a framework of poles, open at the top. They are now made usually of canvas in the same fashion. They can be put up and taken down in very short time, and are consequently best suited for wandering tribes. The grass houses used by the Wichitas and Caddoe tribes along Red River are built in the general shape of a tepee—that is, made of grass over a framework of poles. The interior arrangement is somewhat different from that of the tepee. I had a sample model of the Wichita grass house made for the World's Fair, and it is now in the National Museum, and it was made by the Wichita Indians. The earth lodge of the prairie tribes and the southern tribes is circular, built usually of upright logs inserted in the

round, roofed over with longer poles and coming to a point at the top, nd the whole thing, as nearly as possible, is covered with earth, the roof nd the sides banked up somewhat considerably at the top. Those earth odges were more permanent than the tepees, and were used for the per- nanent villages, while the tepees were used when they got out further nto the plains. As the tribes were drifting from east to west out into he buffalo country some of them discarded the more permanent form and ook, instead, the tepee.

26. Q. Mr. W. F. Cummings, assistant State geologist of the State of Texas, has testified in this case that he examined the two old towns in regard to which you have been testifying to-day, and describes them as "the town farthest west is what I should call the old Mexican town, and the one farthest east the old Indian town." Will you please describe the difference, if any, as observed by you, in the remains of former
607 habitations found in the two places respectively? You have already described fully those in the town farthest east. I want you, in reply to this question, to describe more particularly those in the town to the west.

A. What I considered the remains of habitations of houses are only those circular depressions further east. The very small circular depressions west, near the mountain, I should judge, might be the remains of caches. The place in which I found bones I should consider to be small bone pits. They were too small in my opinion to have been indications of habitations, and on digging down we seemed to find nothing at all but a confused mass of split bones, with the rocks lying about, which might have been boulders originally on top of the deposit.

27. Q. Mr. Cummings, describing these places, says: "The houses were from twelve to eighteen feet long and generally about twelve feet wide; they seem to have been constructed of unburnt bricks or sun-dried bricks, or they may not have been bricks at all; but it was evident that they were constructed of the clays of the immediate vicinity." What was your observation in regard to such evidences at that place?

A. We did not find, and I do not think there could have been found, anything there among those that I call bone pits eighteen feet long; they were smaller. There were no evidences whatever that we could find, after careful investigation, of anything like adobe, sun-dried bricks, or any other kind of brick. I asked my companions, who were
608 well acquainted with the location, whether there had been anything more evident since they had known it, and one of them, I believe, had accompanied Mr. Cummings on one of his exploring trips there. I asked him if any adobe bricks had been found or taken back by Mr. Cummings. I also asked another man who had been there about that time—I think at the same time—Mr. Meers, who had been surveyor of Greer County, and he also said that no adobe bricks had been taken down by Mr. Cummings. After searching carefully over the whole ground around those bone pits, and the rest of the level, we could not find any trace of adobe. I have been in New Mexico and Arizona and know what an adobe is and seen houses of adobe, and have seen adobe, before being put in the wall, stacked up on different occasions, and if adobe has been there at that time I do not think we could have missed finding it.

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A. (Continuing.) There is something else, possibly, that is in that connection. After hearing of the first official notice of this location by the State geologist of Texas, or his assistant, the Bureau wrote down officially a letter to him, stating that as archæology was a part of our province we should be glad to have the opportunity to examine any of the ancient remains—pottery or anything else of the kind—that had been found there. They sent back word, which was in effect that they had not anything that they could show us, and we have not seen any of those things. The official request was made by the Bureau of Ethnology, and the reply was made by the assistant State geologist of Texas.

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609 29. Q. I will ask you to get them and furnish them to the commissioner. Mr. Cummings also says, in reference to these last-named places: "The ashes which I suppose to have been in the fireplaces were always in one corner or end of the building. The openings or doors faced in no particular direction in the different buildings, and there were no depressions in the center." What was your observation in regard to these matters?

A. Suppose I look at that a moment, so I can recollect better. (After examining deposition of the witness Cummings.) I should say that the shapes were too irregular to say that there was anything that could be called the "end" definitely. I should say that those could not be described at all as buildings; that there is no evidence at all or any indication of doors or windows in any part of them; that there is no indication of walls.

29. Q. From your knowledge and experience through travel in New Mexico and Arizona, can you state whether any of the remains of former habitation in the neighborhood of the Wichita Mountains visited by you bore any resemblance to any evidences of habitation of Mexicans or Spaniards which you have met with in your travels?

A. The Mexicans usually built their houses of the adobe bricks. We could find no indication of adobe in these locations.

30. Q. Did you notice any evidences of the cutting down of timber in the vicinity of *of* either of those old towns?

A. Yes.

610 31. Q. Please describe what you saw.

A. We found several old stumps. We found several places where the trees had been recently cut down.

32. Q. Was there anything particular as to the manner in which these trees were cut down which would give any indication of what race of people they had been cut by?

A. I should not be able to decide anything upon the manner of cutting, and could not say. I will say, however, that the recent cutting in all probability had been done by white men from the other side of the river, as I found them taking wood from that side—on the reservation side—while I was out there.

33. Q. Do you know of any tribe of Indians located or ranging through that country who have been in the habit of working in any kind of metal or the manufacturing of ornaments, arrowheads, or common jewelry?

A. The Navajoes, who live further west, and formerly, until about twenty-five years ago, used to range at times across into that country

(Navajo Mountain, immediately adjoining this location, was named from them), are expert silver and iron workers. The prairie tribes who belong in that particular region were not really metal workers, but they would take old iron and grind it down with stones into arrowheads and into knives, and they would take German silver or some similar metals procured from the traders, and sometimes take silver coins, and beat and cut this down into various ornamental pieces. They still do the same thing.

611 *Deposition of Charles W. Pressler* (*Record, p. 991*).

45. Q. Have you investigated the names by which the North and South forks (of the Red River) are and have been known?

A. Yes, sir; I have read a good deal about it.

46. Q. By what name was the South Fork known to the Spaniards and Mexicans?

A. Well, the oldest name that I have seen is the Rio Blanco; that was in 1888.

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49. Q. By what name was the North Fork known to the Mexicans and Spaniards?

A. I have seen different names for it. * * * The earliest explorer' call it the "Rio 'e Las Plumas."

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59. Q. By whom was the North Fork called Rio de Las Plumas?

A. By Fragoso.

60. Q. How far down the Red River did he go?

A. He went from Santa Fe to Natchitoches; all the way through.

61. Q. What did he call the Red River below the Big Wichita?

A. He called it Rio Blanco.

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40. X. Q. In your direct testimony you have said that the South Fork was known as early as 1788 as Rio Blanco?

A. Yes, sir.

41. X. Q. Is not that virtually the name by which one branch of the head waters is known to-day?

612 A. No, sir; it is known as "T'erra Blanco."

42. X. Q. When did you first glean the information that Fragosa possessed this knowledge in the last century?

A. Well, it was when the report of the boundary commission was published, in 1886.

43. X. Q. Is it not a fact that those Spanish records of Fregosa's travel and exploration were in the Spanish record office of the State of Texas, and were never made public until about '86, as you have stated?

A. They were on file there, but I did not know anything of it until then.

Deposition of Gen. Hamilton P. Bee, of San Antonio, Tex. (*Record, p. 1225*).

12. Q. When was your earliest acquaintance, if any, with the upper waters of the Red River or Natchitoches?

A. In the spring of 1843.

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10. X. Q. Can you locate, approximately, the point at which you struck Cache Creek?

A. Where the Cache Creek empties into Red River.

* * * * * * *

A. to 15 X. Q. We ascended Cache Creek a distance, I suppose, of thirty miles, to a village of the Wichita Indians situated on the south side of the Wichita Mountains.

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29. X. Q. Was the Wichita village to which you refer located on Cache Creek?

A. It was upon the head waters of Cache Creek, at the foot of the mountains, near where Fort Sill now is.

613 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation *v.* The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 19. Extracts from depositions taken in the "Greer County Case." S. G. Hopkins. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Jun' 30, 1896. Court of Claims.

632 EXTRACTS FROM TREATIES WITH CHEROKEE, CHOCTAW AND CHICKASAW, CREEK AND SEMINOLE NATIONS MADE IN 1866.

(Pages refer to "Revision of Indian Treaties.")

CHEROKEE TREATY (1866) (14 STAT. L., 799).

(Pp. 92 & 93.) Article 15. The United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribes and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens. And should any such tribe thus settling in said country decide to preserve their tribal organizations and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation, they shall have a district of country set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same into the national fund such

price as may be agreed on by them and the Cherokee Nation, subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.

633 And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees. But no Indians who have no tribal organizations or who shall determine to abandon their tribal organizations shall be permitted to settle east of the 96° of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it, being first obtained. And no Indians who have and determine to preserve their tribal organizations shall be permitted to settle, as herein provided, east of the 96° of longitude without such consent being first obtained unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96° of longitude.

Article 16. The United States may settle friendly Indians in any part of the Cherokee country west of 96°, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of said tribes thus to be settled, the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee simple to each of said tribes, to be held in common or by their members in severalty, as the United States may decide.

634 Said lands thus disposed of to be paid for to the Cherokee Nation at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President.

The Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of 96° of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied.

(Concluded July 19, 1866; ratification advised, with amendments, July 27, 1866; amendments accepted July 31, 1866; proclaimed July 30, 1866.)

635 CHOCTAW AND CHICKASAW TREATY (1866). (14 STAT. L., 769.)

(Pp. 286 & 287.) ARTICLE 3. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said

nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively; and also to give to such persons who were residents aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections, as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of
636 three-fourths to the former and one-fourth to the latter—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

(Concluded April 28, 1866; ratification advised, with amendments, June 28, 1866; amendments accepted July 2, 1866; proclaimed July 10, 1866.)

637 CREEK TREATY (1866). (14 STAT. L., 785).

(Pp. 116 & 117.) ARTICLE 3. In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south; the eastern half of said Creek lands, being retained by them, shall, except as herein otherwise stipulated, be for'ver set apart as a home for said Creek Nation; and in consideration of said cession of the west half of their lands, estimated to contain three million two hundred and fifty thousand five hundred and sixty acres, the United States agree to pay the sum of thirty (30) cents per acre, amounting to nine hundred and seventy-five thousand one hundred and sixty-eight dollars, in the manner hereinafter provided, to wit: Two hundred thousand dollars shall be paid per capita in money, unless otherwise directed by the President of the United States, upon the ratification of this treaty to enable the Creeks to occupy, restore, and improve their farms, and make their nation independent and self-sustaining, and to pay the damages sustained by the mission schools on the North Fork and the Arkansas rivers, not to exceed two thousand dollars, and to pay the delegates such per diem as the agent and Creek council may agree upon, as just and fair compensation, all of which shall be distributed for the

638 purpose by the agent, with the advice of the Creek council, under the direction of the Secretary of the Interior. One hundred thousand dollars shall be paid (in money and divided) to soldiers that enlisted in the Federal Army and the loyal refugee Indians and freedmen who were driven from their homes by the rebel forces, to reimburse them in proportion to their respective losses; four hundred thousand dollars be paid (in money and divided) per capita to said Creek Nation, unless otherwise directed by the President of the United States, under the direction of the Secretary of the Interior, as the same may accrue from the sale of land to other Indians. The United States agree to pay to said Indians, in such manner and for such purposes as the Secretary of the Interior may direct, interest at the rate of five per cent per annum from the date of the ratification of this treaty, on the amount hereinbefore agreed upon for said ceded lands, after deducting the said two hundred thousand dollars; the residue, two hundred and seventy-five thousand one hundred and sixty-eight dollars, shall remain in the Treasury of the United States, and the interest thereon, at the rate of five per centum per annum, be annually paid to said Creeks as above stipulated.

(Concluded June 14, 1866; ratification advised, with amendments, July 19, 1866; amendments accepted July 23, 1866; proclaimed August 11, 1866.)

639 SEMINOLE TREATY (1866). (14 STAT. L., 755.)

(Pp. 812 and 813.) Article 3. In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation under the provisions of article first (1st), treaty of the United States with the Creek and Seminoles, made and concluded at Washington, D. C., August 7, 1856 (see page 104, revision). In consideration of said grant and cession of their lands, estimated at two millions one hundred and sixty-nine thousand and eighty (2,169,080) acres, the United States agree to pay said Seminole Nation the sum of three hundred and twenty-five thousand three hundred and sixty-two ($325,362) dollars, said purchase being at the rate of fifteen cents per acre. The United States having obtained by grant of the Creek Nation the westerly half of their lands, hereby grant to the Seminole Nation the portion thereof hereafter described, which shall constitute the national domain of the Seminole Indians. Said lands so granted by the United States to the Seminole Nation are bounded and described as follows, to wit: Beginning on the Canadian River where the line dividing the Creek lands, according to the terms of their sale to the United States, by their treaty of February 6, 1866, following said line due north to where said line crosses the north fork of the Canadian River; thence up said north fork of the Canadian River a distance sufficient to make two hundred thousand acres by running due south to the Canadian River; thence down said Canadian River to the place of beginning. In consideration of said cession of two hundred thou-

640 sand acres of land described above, the Seminole Nation agrees to pay therefor the price of fifty cents per acre, amounting to the sum of one hundred thousand dollars, which amount shall be deducted from the sum paid by the United States for Seminole lands under the stipulations above written. The balance due the Seminole Nation, after

making said deduction, amounting to one hundred thousand dollars, the United States agree to pay in the following manner, to wit: Thirty thousand dollars shall be paid to enable the Seminoles to occupy, restore, and improve their farms, and to make their nation independent and self-sustaining, and shall be distributed for that purpose under the direction of the Secretary of the Interior; twenty thousand dollars shall be paid in like manner for the purpose of purchasing agricultural implements, seeds, cows, and other stock; fifteen thousand dollars shall be paid for the erection of a mill suitable to accommodate said nation of Indians; seventy thousand dollars to remain in the United States Treasury, upon which the United States shall pay an annual interest of five per cent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools; the remainder of the seventy thousand dollars, being twenty thousand dollars, shall remain a permanent fund, the interest of which shall be paid annually for the support of the Seminole government; forty thousand three hundred and sixty-two dollars shall be appropriated and expended for subsisting said Indians, discriminating in favor of
641 the destitute; all of which amounts, excepting the seventy thousand dollars to remain in the Treasury as a permanent fund, shall be paid upon the ratification of said treaty, and disbursed in such manner as the Secretary of the Interior may direct. The balance, fifty thousand dollars, or so much thereof as may be necessary to pay the losses ascertained and awarded as hereinafter provided, shall be paid when said awards shall have been duly made and approved by the Secretary of the Interior. And in case said fifty thousand dollars shall be insufficient to pay all said awards, it shall be distributed pro rata to those whose claims are so allowed; and until said awards shall be thus paid, the United States agree to pay to said Indians, in such manner and for such purposes as the Secretary of the Interior may direct, interest at the rate of five per cent per annum from the date of the ratification of this treaty.

(Concluded March 21, 1866; ratification advised July 19, 1866; proclaimed August 16, 1896.)

642 SKETCH MAP OF THE INDIAN TERRITORY, SHOWING THE CESSIONS OF THE CHEROKEE, CREEK, SEMINOLE, CHOCTAW, AND CHICKASAW NATIONS, BY THE TREATIES OF 1866, TOGETHER WITH THE LANDS RETAINED BY THOSE NATIONS.

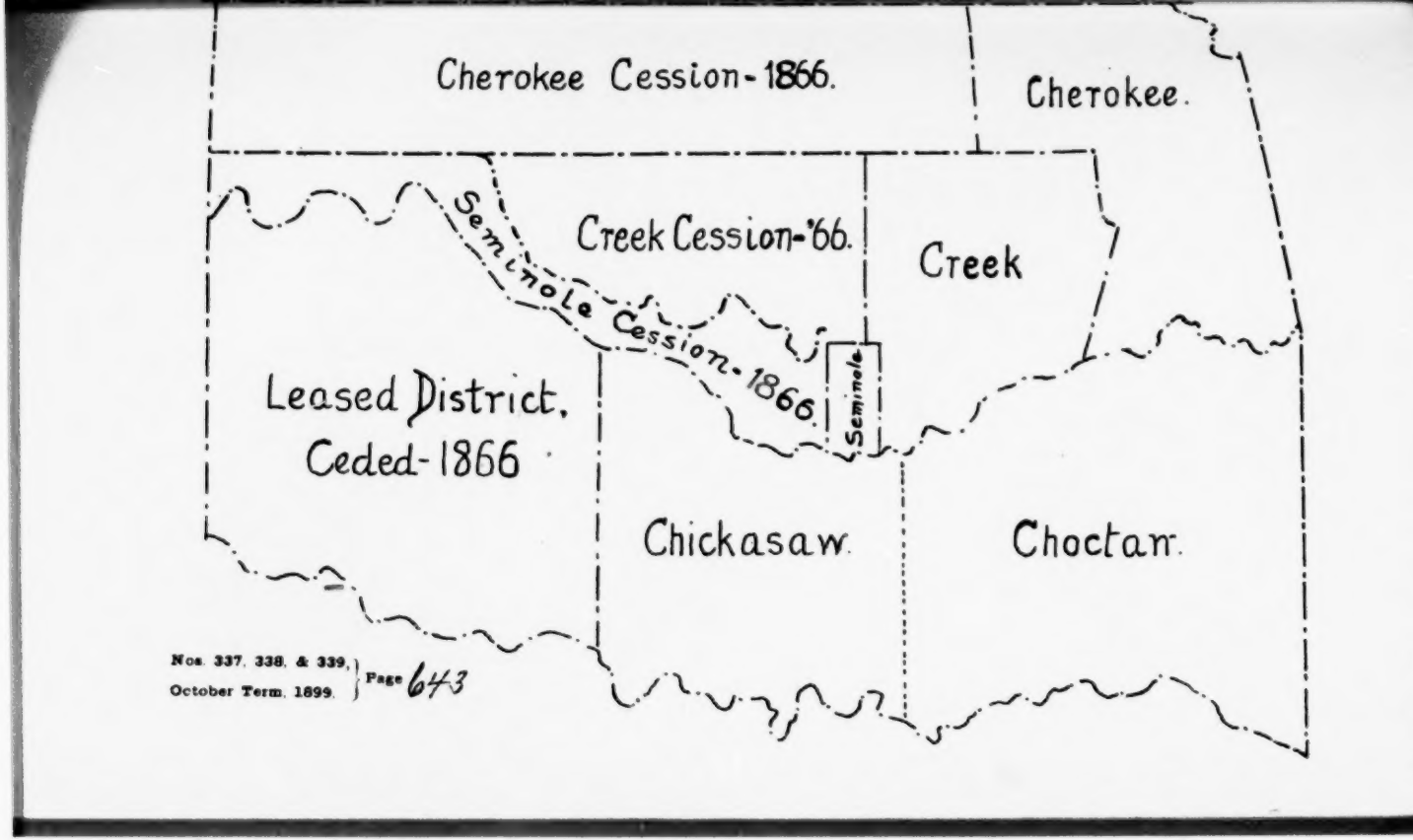
(NOTE.—The Seminole reservation was contained in the Creek cession.)

(Here follows diagram marked p. 643.)

644 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and the Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 25. Extracts from treaties (and maps) showing cessions to the United States, in 1866, by the Cherokee, Creek, Seminole, and Choctaw and Chic'asaw nations. S. G. Hopkins, Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants. Philip Walker and William C. Shelley, counsel. Filed Jun. 30, 1896. Court of Claims.

645 *Extracts from deposition of W. F. Cummins, Grear County Case (Record, p. 965 et seq.).*

Have been assistant State geologist, Texas, for four years (1893).

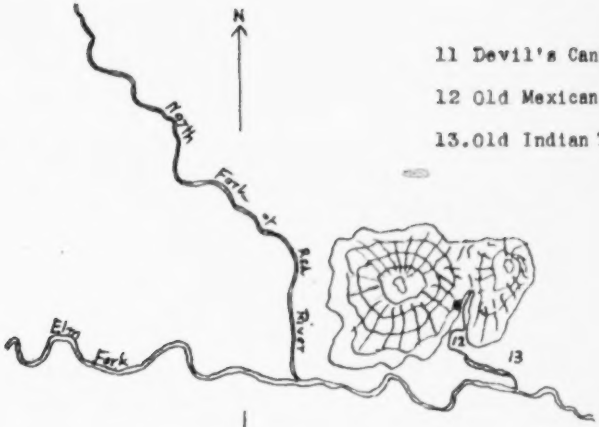


Nos. 337, 338, & 339,
October Term, 1899. } Page 643

11301

Map, "Exhibit A", to deposition of

W. F. Cummins,



11 Devil's Canyon.

12 Old Mexican Town.

13. Old Indian Town.

Nos. 337, 338, & 339.
October Term, 1899. } Page 646

6. Q. Did you ever examine what purported to be the ruins of two old towns near the Wichita Mountains, east of Red River, or the North Fork of Red River, as it is sometimes called?

A. I did.

7. Q. Please state under what circumstances you made the examination, and particularly and minutely what you found in each of those towns, and state the manner of their construction.

A. I went under the instruction of the State geologist, Mr. Dumble.

* * * * * * *

8. Q. Where are those towns situated with reference to Red River, or what is sometimes called the North Fork and the Wichita Mountains?

A. They are between the mountain and the river, towards the western end or the termination of the range—the Wichita range.

9. Q. Are they east or west of the North Fork?

A. They are on the north side. The Red River runs almost directly east at that place.

* * * * * * *

21. Q. Did you make a map of this immediate section and locate upon it the two old towns to which you refer?

A. I did.

22. Q. Will you please identify it in some way, so that it may be attached to your deposition?

(Identified by marking "Exhibit A.")

(Here follows diagram marked p. 646.)

647 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and The Wichita and affiliated bands of Indians. Evidence on behalf of defendant Indians. Exhibit in sur-rebuttal. Extract from deposition of W. F. Cummins, Grear County Case, page 965. The clerk will file. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel. Filed Aug. 31, 1896. Court f Claims.

648 In the Court of Claims.

THE CHOCTAW NATION AND THE CHICKASAW Nation, v. THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians.	No. 18932.

Motion for a rule upon the Secretary of the Interior to furnish copies of official papers on file in the Department of the Interior.

Come now the defendant Indians by their attorneys and move the court for a rule upon the Secretary of the Interior to furnish the court with duly certified copies of the papers hereinafter designated to be used in the trial of the above-entitled cause, as evidence on behalf of the defendant Indians, viz:

(1) Clark's report of census of tribes in 1816.

(2) Letter of T. A. Smith, maj. general, to the Secretary of War, dated January 31, 1818, enclosing letter from S. H. Long, major of engineers, U.S.A., dated January 30, 1818, including said letter of Maj. Long.

649 (3) Letter from Commissioner of Indian Affairs to Secretary of War, dated March 25, 1856, estimating cost of bringing Wichita Indians to Washington, D. C.

(4) Letter from J. H. B. Latrobe, dated April 4, 1866, relating to Choctaw and Chickasaw treaty of 1866, to be found in Choctaw files marked Choctaw L. 91.

(5) Letter of F. W. Armstrong, A. S. W. S., written at Choctaw Agency March 6, 1835.

(5) Letter of same date June 18, 1835.

(5) Letter of Gen'l M. Arbuckle, dated as follows: April 15, 1835.

(5) Letters of M. Stokes and M. Arbuckle, as follows: July 14, 1835, Sept. 15 and Sept. 26, 1835.

(6) Journal of the commission appointed to make the Comanche-Wichita treaty, with the book marked A referred to in said papers.

(7) Letter of Wm. Clark to Sec. of War, dated February 6, 1818.

(7) Letter of Wm. Clark and Col. Aug. Choteau, dated Sept. 6, 1818, transmitting Quapaw treaty of August 24, 1818.

(8) Letter of M. Stokes and M. Arbuckle of May 5, another letter of Stokes, Arbuckle, and F. W. Armstrong of May 14, 1835, to Secretary of War, explaining arrangements for treaty between Wichitas and other tribes, with instructions from Secretary of War on same subject.

Map 884 in tribe 702, 1816, of Indian tribes, with copies referred to in memorandum made by Paul Bodie in 1884.

Map of Indian Territory 497. Tribe 469, section thereof from lat. 33–30′ N. to 36; long. 97° W. to 100 W.

J. M. VALE,
A. A. LIPSCOMB,
Attorneys for Defts. Ind.

PHILIP WALKER.
W. C. SHELLEY,
Counsel.

(Indorsed:) In the Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation, claimants, v. The United States and the Wichita and affiliated bands of Indians. Motion for a rule on the Secretary of the Interior to furnish the court copies of certain official papers. J. M. Vale, A. A. Lipscomb, attorneys for the defendant Indians.

650 DEPARTMENT OF THE INTERIOR.
Washington, June 25, 1896.

JOHN RANDOLPH, Esq.,
Assistant Clerk Court of Claims.

SIR: I acknowledge receipt of call of the Court of Claims, dated June 6, 1896, for papers in the Indian depredation claim of the Choctaw Nation and Chickasaw Nation, numbered 18932, etc.

In response thereto, I transmit herewith report of June 23, 1896, from the Commissioner of Indian Affairs, inclosing papers pertaining to certain of the cases referred to.

Very respectfully, WM. H. SIMS,
Acting Secretary.

3715 Ind. Div. 11 inclosures.

650½ (Indorsed:) 18932, reply of Interior Dept. Filed Jun' 27, 1896. Court of Claims.

651 [11 enclosures.]

Refer in reply to the following: Land, 21690–1896.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 23, 1896.

The Honorable,
The SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of a communication, dated June 6, 1896, from the Court of Claims, requesting the Department to furnish the court, that the same may be used in evidence in the trial of the cause now pending in said court entitled The Choctaw Nation and the Chickasaw Nation, claimants, vs. The United States, No. 18932, any information or papers (or duly authenticated copies of same) on file in this office, embraced in the call made by Messrs. Vale et al., in the accompanying rule allowed by Chief Justice Richardson.

In compliance with said reference, I have the honor to submit herewith a certified copy of the papers called for, viz:

1. Supt. Wm. Clark's report of census of Indian tribes in 1816.

2. Letter of Major-General Smith to the Secretary of War, dated January 31, 1818, enclosing letter of S. H. Long, major of engineers, U. S. A., dated January 30, 1818, including said Long's letter.

652 3. Report from this office to the Secretary of War, dated March 25, 1856, estimating cost of taking Wichita Indians to Washington, D. C.

4. Letter from J. H. B. Latrobe, dated April 4, 1866, relating to certain portions of the Choctaw and Chickasaw treaty of 1866.

5. Two letters from F. W. Armstrong, one dated March 6, 1835, and the other dated June 18, 1835; letter from General M. Arbuckle, dated April 15, 1835; three letters from M. Stokes and M. Arbuckle, dated July 14, September 15, and September 26, 1835, all relating to negotiations with the wild Indian tribes west of the Mississippi.

6. Journal of the commission appointed to make the Comanche-Wichita treaty.

7. Letter from Supt. Wm. Clark to the Secretary of War, dated February 6, 1818, and letter from said Clark and Col. Aug. Chouteau, dated September 6, 1818, transmitting the Quapaw treaty of August 24, 1818.

8. Letter from M. Stokes and M. Arbuckle, dated May 5, 1835; letter from Messrs. M. Stokes, M. Arbuckle, and F. W. Armstrong, dated May 14, 1835, to the Secretary of War, explaining their arrangements for treaty between the Wichitas and other tribes, with instructions from the Secretary of War on the same subject.

9. Map No. 884, prepared in 1816, by Aug. Chouteau, with notes of Indian tribes occupying the country designated on said map, etc., by said Chouteau, dated February 21, 1816.

653 10. Section of map of Indian Territory between 33° 30′ and 36° north latitude, and 97° and 100° west longitude, known as Map No. 497.

The papers submitted are herewith respectfully returned.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

654 [Indorsed.]

COMM'R OF INDIAN AFFAIRS, *June 23, 1896.*

Returns call of Court of Claims for certified copy of papers in claim 18932: The Choctaw and Chickasaw Nation vs. U. S., with report thereon.

12 enclos.

No. 18932. The Choctaw Nation and Chickasaw Nation, clmt., v. The U. S., accompanying letter, reply of Interior Dept. Filed Jun. 27, 1896. Court of Claims.

659 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 23, 1896.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.] D. M. BROWNING, *Commissioner.*

660 WAR DEPARTMENT, OFFICE INDIAN AFFAIRS.
March 25, 1836.

SIR: In compliance with your direction, I respectfully submit an estimate of the amount that will be required to defray the expenses of a visit of a deputation of Indians from the western prairie to this city. In preparing this estimate I have availed myself of the practical information Major Mason has been able to furnish.

There are three principal tribes, the Camanches, Witchetas, and Kioways. Of each of these there are several bands. It is considered advisable to bring here at least one of each band; but there is reason to believe that all the bands of the Camanches can not be reached in season. It is proposed, therefore, by Major Mason to bring eight of Camanches, eight of the Witchetas, and four of the Kioways. For these it will be necessary to have four interpreters—one for each of the tribes—and an Osage, through whom communications may be held with each of them. These Indians will of course come to Fort Gibson mounted, and their horses must be fed there during their absence. If the state of the waters will permit they will proceed from Fort Gibson to Wheeling in steamboats, otherwise they will go by land from Fort Gibson to Little Rock. In the latter event the expense will be greater than the estimate, which is based upon the supposition that a water passage will be practicable. For the expenses that must be incurred for the deputation while in this city and travelling through the States, the accounts of the expenditures for Black Hawk and his party have been assumed as a guide in determining the amount.

661 The estimate is conjectural, and to meet other expenses that may be caused by detentions upon their route or by other circum-

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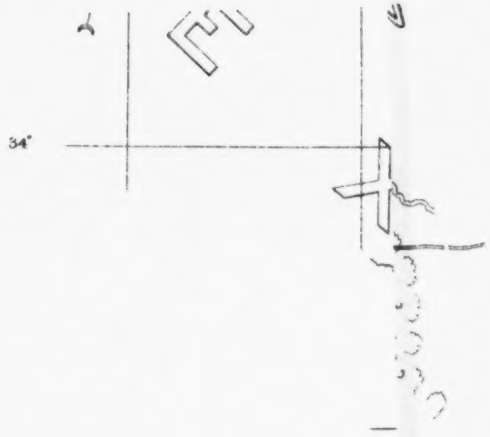

tances that can not now be foreseen, it is respectfully suggested that not ess than seventeen thousand dollars should be appropriated.

ELBERT HERRING.

Very, &c.,

Hon. LEWIS CASS,
Secretary of War.

Estimate.

662

Eight Camanchas, eight Witchetas, four Kioways, four interpreters, one military officer, and two assistant conductors.

	Amounts.
Steamboat fare from Fort Gibson to Wheeling, 27 men, at $30.00 each	$810.00
Stage fare to this city, 27 men, at $18.00 each	486.00
Subsistence from Fort Gibson to this place, 27 men, 40 days, at $2.00 each	2,160.00
One interpreter (Osage), $3 a day; three interpreters, $1.50 a day, 120 days	900.00
Daily expenses of the party, including stage fare, hack hire, public amusements, &c., 40 days, 27 men, at $4 per day	4,320.00
Expenses returning to Fort Gibson	3,456.00
Presents, a suit of clothes each, guns, flags, medals, cloths, stroods, ornaments, &c	2,500.00
Contingencies, expenses, keeping of Indian horses, medical attendance, &c	1,000.00
Total	$15,632.00

663

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 23, 1896.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true and literal copy of so much of the map of Indian Territory on file in this office as map No. 497, as shows the area of Indian Territory between 33° 30′ and 36° north latitude and between 97° and 100° west longitude, as the same appears on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.] D. M. BROWNING, *Commissioner.*

(Here follows diagram marked p. 664.)

665

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 23, 1896.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.] D. M. BROWNING, *Commissioner.*

666 *A report of the names and probable number of the tribes of Indians in the Missouri Territory, the amount of annuities paid them, the amount of expenses of provisions issued to them at the distribution of their annuities and on every other occasion, and the amount of presents other than provisions which ought to be distributed among them. Missouri Territory.* (*St. Louis, November 4th, 1816.*)

Names of Indian tribes.	Probable No. of each tribe of Indians.		Places where the tribes reside or rove.	Amount of annuities paid per annum.	The annual am't of expenses of provisions issued and delivered to the tribes on every occasion.	The am't of presents other than provisions which ought to be delivered among the tribes.	Total amount of provisions, presents, and annuities.
	No. of men.	No. of so'ls.					
Quapaws	340	1,060	In 4 small villages on the south side of Arkansaw River	Dollars.	$125	$1,000	$1,125
Cherokees	1,000	3,600	In a settlement of 18 miles on both sides of the Arkansaw River, 200 miles up	"	320	1,000	1,320
Piankashaws	50	200	About 60 miles west of the mouth of Ohio, near the Mississippi swamps	800	65	50	915
Shawonees	350	1,300	Three towns near Cape Girardeau & 1 about 50 miles west of St. Louis and 2 on St. Francis.	"	131	500	631
Dellaways	285	840	One town near Cape Girardeau and 3 on the waters of White River and scattering parties near St. Louis.	"	133	500	633
Peorias	15	50	In a village on St. Francis about 100 miles from St. Louis, SW	"	36	200	236
Great Osage, 1st	400	1,600	On the Osage River, 3 miles west of the line laterly run			400	"
Great Osage, 2d	650	2,600	On the Verdigreese fork of Arkansaw	1,000	736	400	3,436
Little Osage	450	1,800	On a fork of the Arkansaw called Neeozho	500		400	
Ioways	300	1,000	On Grand River near the settlement, and a village on Lemoin	"	256	500	756
Kansaw	400	1,500	Their village on Kansaw River; rove as low as Fort Osage	"	195	800	995
Ottoes	300	1,200	One village on River Platte a few miles up that river	"	98	400	498
3 tribes Panis	1,400	5,000	2 villages on River Platte & 1 village on the Wolf fork	"	60	1,000	1,060
Marhars	450	1,800	1 village on the SW. side of the Missouri above River Platt	"	100	400	500
Ricaras	100	400	1 village on the SW. side of the Missouri above the Mahas	"	50	100	150
Chyannes	500	2,000	Roven in the plains on the SW. side of the Missouri and on Cheyenne River	"	"	100	100
Ricaras	750	3,000	3 villages on the bank of the Missouri, W. side above the Cheyenne	"	"	500	500
Mandans	350	1,600	2 villages on do do about 1,600 miles up by water	"	"	500	500
Minetaries	650	2,800	3 villages on do do near the Mandans	"	"	500	500
7 tribes of Sioux	2,000	7,000	Roving on both sides of the Missouri from River Platt, 700 miles up	"	500	3,000	3,500
Tribes in plains	4,000	15,400	Roye on both sides of the Missouri above the Sioux & on River Platt, White River, Eau qui Conre, Cheyenne and Roche Jaune	"	"	300	300
Total	14,740	55,750	Total on the Missouri waters	2,300	2,805	12,550	17,655
Sacks	800	3,000	1 village at Rock River. 1 village at Grand River, & scattered on the W. side of Mississippi.	800	725	2,000	3,925
Foxes	400	1,500	1 small village at Rock River, 1 do do 1 large village at Turkey River. W. side Mississippi.	400			

6 tribes of Sioux	1,800	7,000	Roving from Prairie du Chien to the head of River St. Peters & above St. Antony's Falls	..	3,886	6,000	9,886
Chipaways	2,990	6,593	On the Mississippi above the Sioux & west of Lake Superior	..	..	2,990	2,990
	5,000	18,000	Total No. of Indians on the west side of the Mississippi and near its head waters	1,200	4,611	10,000	15,811
Total	19,740	73,750	Total number of Indians in Missouri territory and east of the mountains				
Cadean & Paneas	..	5,600	On Red River near the southern boundary line of the Missouri territory				
Piqué Creeks			On the western mountains between the parallel of latitude 33° and 49° N	..		450	450
Roving bands		20,000	Called by different names, but speak generally the same language				
Different tribes		82,000	On the west side of the Rocky Mountains between the parallel of Lat'd 40 and 49° N	3,500	7,416	23,000	33,916
Grand total		180,750					

[1] Copy mutilated.

WM. CLARK.

It is important to send presents to the chiefs of distant tribes in flags, medals, coats, tobacco, cloth, and sometimes guns and ammunition.

(Indorsed:) 18932. Reply of Interior Dept. Filed, Jun. 27, 1896, Court of Claims.

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245

667 In the Court of Claims.

THE CHOCTAW NATION AND THE CHICKASAW Nation
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians. } No. 18932.

Motion for rule on the Secretary of War to furnish certified copies certain records.

Come now the defendant Indians, by their attorneys, and move t court for a rule upon the Secretary of War to furnish to the court ce fied copies of the following records of the War Department, to be us as evidence in the above-entitled cause:

1st. Marcy's map of the Red River, to be found in map room of t Office of the Chief of Engineers, numbered Q 74, bearing date 1856.

2nd. Letter from Major Emery, dated Fort Arbuckle, to Ma McDowell, asst. adj. general, October 18, 1858, with accompanying m Files number 143 E (A. G. O.), 1858.

J. M. VALE,
A. A. LIPSCOMB,
Attorneys for Defendant Indians

PHILIP WALKER,
W. C. SHELLEY,
Counsel.

668 (Indorsed:) In the Court of Claims, No. 18932. The Choc Nation and the Chickasaw Nation vs. The United States and Wichita and affiliated bands of Indians. Motion for rule upon the S retary of War to furnish certified copies of certain records, &c. J. Vale, A. A. Lipscomb, attys. Filed Jun. 11, 1896, Court of Claims.

669 In the Court of Claims.

THE CHOCTAW NATION AND THE CHICKASAW Nation
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians. } No. 18932.

Motion for rule on the Secretary of War to furnish certified copies certain records.

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1st. Marcy's map of the Red River, to be found in map room o office of the Chief of Engineers, numbered Q 74, bearing date 185

2nd. Letter from Major Emery, dated Fort Arbuckle, to Major McDowell, asst. adj. general, October 18, 1858, with accompanying map. Files number 143 E (A. G. O.), 1858.

J. M. VALE,
A. A. LIPSCOMB,
Attorneys for Defendant Indians.

PHILIP WALKER,
W. C. SHELLEY,
Counsel.

670 (Indorsed:) In the Court of Claims, No. 18932. The Choctaw Nation and the Chickasaw Nation vs. The United States and the Wichita and affiliated bands of Indians. 143 E (A. G. O.), '58. Motion for rule upon the Secretary of War to furnish certified copies of certain records, &c. 1 Enc. A. G. O. A. G. C. of E. Memo. in A. G. O. J. M. Vale, A. A. Lipscomb, attys. Filed Jun. 27, 1896, Court of Claims.

[1st indorsement.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, June 16, 1896.

Respectfully returned, by authority of the Secretary of War, through the Chief of Engineers, U. S. Army, to the Court of Claims, with a certified copy of the letter (and of the map referred to therein) of Major W. H. Emory, 1st Cavalry, commanding Fort Arbuckle, C. N., October 18, 1858, addressed to Major McDowell, assistant adjutant-general, Headquarters of the Army, called for herein.

J. C. GILMORE,
Assistant Adjutant-General.

(1 enclosure.)

18932.

[2d indorsement.]

OFFICE CHIEF OF ENGINEERS, U. S. ARMY,
June 25, 1896.

Respectfully forwarded, by authority of the Secretary of War, to the Court of Claims, with a certified copy of Captain Marcy's map of Red River, referred to within.

A. MACKENZIE,
Acting Chief of Engineers.

15672. Inclo. 1 & two addl. incos. accompg.

671 UNITED STATES OF AMERICA,
WAR DEPARTMENT,
Washington City, June 25, 1896.

I hereby certify that the tracing hereto attached is a true copy of Capt. Marcy's map of Red River with corrections of the main branch lying between 94° and 104° west longitude and 32° and 36° north latitude, on file in the Office of the Chief of Engineers, U. S. Army.

A. MACKENZIE,
Acting Chief of Engineers.

Be it known that A. Mackenzie, who signed the foregoing certificate, is the Acting Chief of Engineers, United States Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand, and caused the seal of the War Department to be affixed, on this 25th day of June, one thousand eight hundred and ninety-six.

[SEAL.]

JOSEPH B. DOE,
Acting Secretary of War.

(Here follows diagram marked p. 672.)

673 [Printed in defts' ev., p. 30.]

38783, A. G. O., 1896.

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
Washington City, June 16, 1896.

Pursuant to section 882 of the Revised Statutes, I hereby certify that it appears from the records of the Adjutant-General's Office that the annexed document is a true copy of the letter (and of the map referred to therein) of Major W. H. Emory, 1st Cavalry, commanding Fort Arbuckle, C. N., October 18, 1858, addressed to Major McDowell, assistant adjutant-general, Headquarters of the Army.

GEO. D. RUGGLES,
Adjutant-General.

Be it known that George D. Ruggles, who signed the foregoing certificate, is the Adjutant-General U. S. Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand, and caused the seal of the War Department to be affixed, on this 16th day of June, one thousand eight hundred and ninety-six.

[SEAL.]

JOSEPH B. DOE,
Assistant Secretary of War.

674 HEADQUARTERS, FORT ARBUCKLE, C. N.,
October 18, 1858.

Major MCDOWELL,
Asst. Adjutant-General, Headqrs. of the Army.

SIR: I arrived here October 12th, and the same day had the honor to receive your letter containing the instructions of the general in chief. I have given the subject since I received the letter my unremitting attention, and happily the materials and persons are in this vicinity to enable me to give all the facts required with some degree of confidence, but as I am required to report as speedily as possible, I may venture some opinions which I may ask the liberty to modify hereafter to a certain extent, but which will not in any degree materially affect the general conclusion.

As a preliminary fact necessary to be understood, which is probably known at headquarters, it is assumed that the 98th meridian of longitude which defines the eastern boundary assigned to the Wichitas, does not run through Arbuckle, as laid down on Captain Marcy's map, but run

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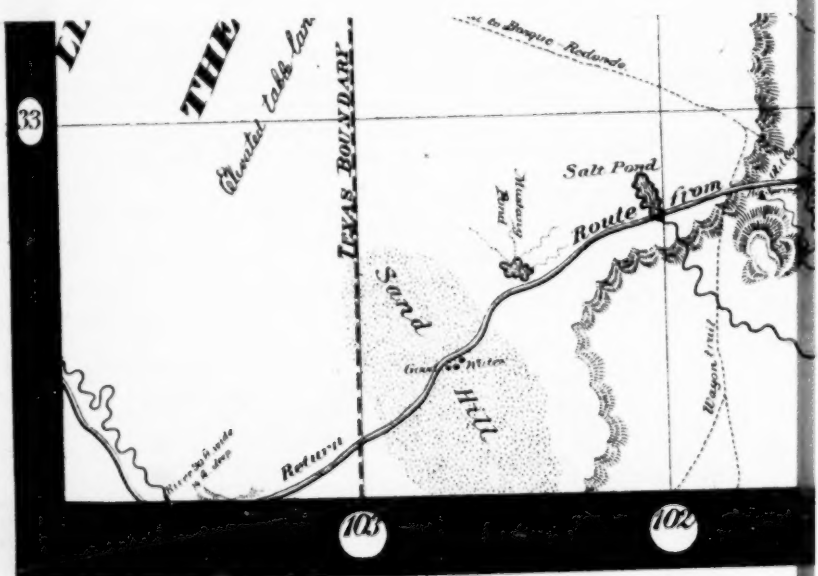

forty-two miles west of Fort Arbuckle; consequently the 100 meridian, which defines the western boundary of the same tract, may be assumed to fall thirty miles west of Otter Creek, or the western base of the Wichita Mountains. For this I have the authority of a general map published by the Department of the Interior in my name, and also the higher authority based upon the actual observations of the U. S. astronomer, Mr. Majors, now present at this post, in whose results I have entire confidence. This result at once excludes the Wichitas from the country in which they were recently settled, and had planted corn for the last five or six years, and which was supposed, until Mr. Major's determination, to be between the 98th and 100 meridian of longitude, but which, in fact, is now proved to be 5 miles east of the meridian of 98.

Another preliminary question in part connected with the above is that of military jurisdiction between the Department of the West and the Department of Texas.

The Wichita Mountains, the strategetic point of operations against the northern Comanches, lies so near the line of these respective departments as to produce cross purposes in the action of both civil and military authorities, which has really occurred to some extent, as exemplified by recent occurrences. In considering the question it is therefore necessary to look at it in two points of view. First, that it belongs to the Department of the West, and second that it belongs to the Department of Texas. The whole district of country should, in fact, be one military department. When the two posts indicated by the commander in chief are established, there will, I think, be no use for more than one company of horse, and that for a short time at Belknap, if these posts are assigned to Texas, for after they are established there will be no movement of Comanches in that vicinity except a few straggling horse thieves. In the same way, if these posts which will fall in the limits of the Department of the West, are retained in that department, there will be no necessity for keeping more than a company of horse at Arbuckle, whose duty
676 it will be to chase straggling parties of marauders and keep the outposts advised of any occurrences.

Of "the propriety of establishing one or more posts in the Wichita country."

That such would be advantageous to the service I think there can be no doubt. Neither Indians or agents will attempt to occupy that country till protected by U. S. troops. The whole Wichita and Keechi nation are now assembled about this post, having deserted their village 40 miles west of this place and came into this post two days after my arrival, in apprehension of the Comanches.

Several eligible positions present themselves for a post on the southern slope of the Wichita Mountains, combining healthy climate, fertile soil, good permanent water, timber, and stone suitable for building. Among these stands preeminently the site of the old Keechi and Wichita village, on the eastern branch of Cache Creek, about fifteen or twenty miles SE. from Mount Scott, the most prominent peak of the Wichita Mountains. There is also a point to the north of the Wichita Mountains on Clear Creek, which runs into the Canadian River 60 miles east of the Antelope hills, and several on the Washita River, but none combining the advantages of the first named in agricultural capabilities. Where

troops are to be sustained, especially cavalry, the corn-growing capacity of the country must be considered. The winters on the elevated plains, near the base of the Wichita Mountains, are cold, and grain is absolutely necessary to sustain animals in condition for efficient service, and the distance from the settlements is too far to haul it.

677 To give protection to the Wichitas in the peaceful occupation of their country and to enable them to cultivate the soil, for which they have shown a strong predisposition, I consider the point as indicated on Cache Creek as beyond all doubt the most eligible. Whether this post or any other single point can be selected, which, at the same time, will effect this object and will enable the command to keep a lookout on the northern Comanches and effectually check their depredations, is a matter of extreme doubt in my mind, and can only be determined by experiment.

The Comanches, like the Kiowas and Cheyennes, live at no particular place. They occupy ranges of country and move their camp whenever the grass is eaten up or burnt out. They are at present supposed to be ranging in the vicinity of the Antelope hills, and the regions about the head of Red River. They come down upon the settlements by trails leading both to the east and west of the Wichita Mountains. The post on Cache Creek, if furnished with cavalry, would watch the trails on the eastern side of the Wichita Mountains, including the unsettled country from thence to Arbuckle. It could not so effectually watch the trails on the western slope. To do that effectually a post on the west slope of the Wichita Mountains is necessary, and there are but two points which can furnish the necessary good permanent water, timber and stone. The first is Otter Creek, or, as the Indians call it, Pecan Creek, which unites with the north fork of Red River at the western base of the Wichita

678 Mountains, and the other is Elk Creek, which unites with the same river 30 miles to the north.

Neither presents the advantages for cultivation of the point on Cache Creek south of Mount Scott, but they afford sufficient good water and wood and are healthy localities. West of these creeks for some distance all accounts concur in representing the water as bad and highly charged with salt of different kinds, and the country as generally destitute of timber.

I therefore do not hesitate to recommend that two posts be established, one at Cache Creek and the other at Elk or Otter Creek, and that for the present neither Belknap or Arbuckle be entirely abandoned.

It is stated, and I believe truly, that a very large number of Indians, composed of Kiowas, Cheyennes, and Arapahoes, have joined the Comanches, and that the Comanches, among whom there was a peace party, are now united and act together, whether for peace or war is yet to be determined, but whatever may be their professions, the establishing of these posts will, for the moment, excite the combined opposition of all those Indians, and should not, in my opinion, be undertaken with less than four or six companies to each post.

In the meantime the number of Indians collected about this post (Fort Arbuckle), under various pretexts, and the unsettled condition of the Chickasaws on this frontier, many of whom have left their farms from apprehension of danger, would render inexpedient at this time the withdrawal of any considerable portion of the force from this post except for temporary purposes.

The whole country within a circuit of two hundred miles of the
) Wichita Mountains comes clearly within the same military relation,
and to be governed efficiently must be governed by one head.
present it is divided between two departments, and the limits of these
partments meet at the precise point where difficulties are most apt here-
er to arise. To which department the district should be assigned, the
neral-in-chief will be able to decide without any views of mine.
I may be pardoned, however, for the suggestion that it will not do to
eak up at this time the military communication through the half civi-
ed nations lying between this and the Missouri frontier. From what
learned along the road an occasional show of troops along the line is
ry necessary.

Supplying troops by the line of either the Red or Arkansas rivers has
ways been attended with vexatious delays and great expense, and in the
d the new posts contemplated must, I think, look for supplies to some
ost on the Gulf of Mexico, to Helena, or Gaines Landing, the nearest
oint on the Mississippi, or to Jefferson City, the present terminus of the
Pacific Railroad. All are about equidistant from the Wichita Mountains,
ut the last has the advantage in the excellence of the road and the healthi-
ess of the climate through which it passes, and the fact that most of it
will traverse Indian Territory, which requires from time to time a show
f military force, though perhaps no permanent establishment.

In view of the great expense which will at first attend the subsisting
f these new posts, it may not be out of place for me to suggest the pro-
priety of establishing, first, the post for the protection of the
680 Wichitas, who will, probably, raise corn enough the first season
to supply that post, and who will, if judiciously directed, be enabled
to supply the other post the following season.

Mr. Majors has been kind enough to furnish me a map of the country,
showing how the meridians run according to his determinations, defining
the country within the two degrees leased for the use of the Wichitas,
&c., which I herewith submit.

I have the honor to be, your obedient servant,

W. H. EMORY,
Major 1st Cavalry, Comdg.

HD. QRS. OF THE ARMY,
New York, Nov. 5, 1858.

The general-in-chief approves the views of Major Emory, and he recommends the establishment of two posts in the district of country assigned to the Witchitas and Keechies Indians, one on Cache, the other on Otter Creek, for garrisons of two companies of cavalry and 1 of infantry, the post on Cache Creek to be established at once, the other as early as may be practicable. Fort Smith, Arkansas, will be the proper depot for supplying the new posts.

The commander of the Department of Texas should have the direction
of affairs in the Wichita country, and the general-in-chief pur-
681 poses to assign this portion of the Department of the West to the
Department of Texas.

Respectfully referred to the Adjutant-General for the information of the Secretary of War, by direction of the general-in-chief.

L. THOMAS,
Asst. Adjt. Gen.

Respectfully submitted to the Secretary of War.

S. COOPER,
Adjt. Gen.

A. G. O., Nov. 8, '58.

(Here follows diagram marked p. 682.)

683 *Evidence for the United States.*

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WASHINGTON, *Jan. 19th, 1846.*

Hon. W. MEDILL,
Commissioner of Indian Affairs.

SIR: I have received your letter of the 17th inst., in which you say "The Department is anxious to ascertain the number of Indians residing within the boundaries of Texas, as well as their names and locations, and all other information relative to them."

I would premise by stating that the habits of the Indians within the Texan border are so uncivilized and they are so predatory and wandering that correctness as to their number can not be relied upon. From the best information that I possess concerning them they may be divided as follows, viz: The Camanches numbering about 20,000 and separated into four great bands—Schecole's band, Tabaquena's band, Schecone's band, and another's, whose name I forget. Schecole is the principal chief. During the warm season they wander about from the Santa Fe Trace to Santa Fe and the Mexican settlements south and west for purposes of plundering and marauding.

They have no fixed habitations, no agriculture, no civilization, and are merely robbers and plunderers. They are rich in horses and mules and are the lords of the prairies.

They winter upon the north branch of the Rio Colorado of the East, at or about the Round Hills.

684 *Kioways.*—They range along the Rocky Mountains, are west of the Camanches, and unite with them in all their wars. They speak a different language and are (as I am informed) equally numerous.

The Toweash, Waco, Towagany, and Wachita Indians are on the Red River above the Cross Timbers, with their villages on both sides and near each other. Language

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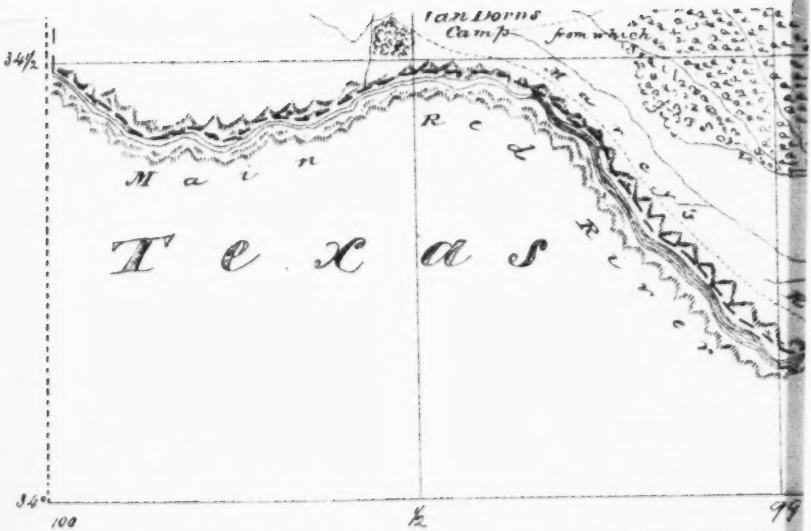

Nos. 337, 338, & 339
October Term, 1899

They have amicable relations with the Camanches, though dreading them—are but fragments of tribes and weak, but partially agricultural, raising maize and the various kinds of vegetables.

Caddoes.—A part of the Caddoes are in Texas on the waters of the Colorado and are small in number.

Biloxis and Coushattas.—These are in the neighborhood of the Caddoes, and are small tribes and agricultural (semi).

Lipans.—These are in Texas; small and friendly.

Attakapas.—A few of these Indians are still in existence in the They are cannibals, and are nearly exterminated. Formerly they lived in Louisiana, in what is now called the Attakapas country, until they were driven away by the Choctaws. They left their name to the country, which signifies in the Choctaw language cannibal.

The whole country west of the Cross Timber is claimed by the Comanches, and is a high rolling prairie region or plateau.

The Comanches and Kioways roam over the country west of 100° west longitude, and when out of buffalo meat live on their horses and mules. They are very superstitious, but submissive to their chiefs, and have a general idea of the Supreme Being. They are not as brave as the emigrant Indians, somewhat thriving, and are never overreached in a bargain.

If proper measures were adopted by the General Government, in the appointment of an agent of the right character—shrewd, sagacious, and true-hearted, who would never deceive them, but make himself known to them as their firm and unchanging friend—they might be reclaimed, improved, greatly civilized, and, I think, would not only not violate a treaty with this country, but could be relied upon as allies and friends.

The short notice I have had of your wishes and my departure from this city for a few days is my apology for the inadequacy of the manner in which I have answered your request.

Very respectfully, yr. obt. servt.,

P. P. PITCHLYNN.

COUNCIL GROUND,
Comanche Peak, 20 March, 1846.

SIR: In my communication of the 10th inst. I informed you that the Comanches had all set out for their hunting grounds and that the other smaller bands were still here in council.

I have now the honor to inform you that all have broken up, seemingly much pleased, with the exception of one Waco chief, who wanted more presents and more beef, and in consequence of a refusal expressed dissatisfaction and a disinclination to bring in stolen horses in possession of that tribe.

685 As far as professions of friendship and pledges to abstain in future from further depredations upon the frontier will go, they were made by all these chiefs, and I am satisfied in good faith, but still of the opinion that the pledges will be observed only as long as the same stimulant is in view—hopes of presents, or fear of identity and punishment of their race.

The talk of each chief is herewith enclosed, as expressive of their views in their own language. These five little bands are much less

numerous in numbers than had been previously stated. They do not exceed in average above 150 souls—making about 750—or above 10 warriors in all.

It is said the smallpox destroyed in one season 800 warriors. They are an extreme destitute and depraved people.

* * * * * * *

I have the honor to be, very respectfully, your obt. servt.,

P. M. BUTLER, *Ind. Com.*

Hon'l W. MEDILL,
Com. of Ind. Affairs.

[Enclosure No. 2.]

Talk of the Tiwaconee chief, delivered on the 11th March, 1846, at the Commanche Peak, in answer to my talk of the day before.

My brother, we have heard your talk sent by our Great Father. It is a good talk. We have thought deep on it, and swallowed it.

I am the oldest man present, and it is agreed that I shall talk first. We are glad that our Great Father has sent you here to talk to his red children. We are glad to hear that there is to be a general peace; that our women and children can sleep in peace, and that there is to be no more war. We are glad that our Great Father has sent us some blankets, for our blankets for our women and some presents for ourselves, and that we want to be put upon the same footing with our red brothers the other side of Red River—Muscogees, Cherokees, Chicasaws, and Choctaws. We have no captive children amongst us, but our young men have stolen many horses. We will bring them in at the next council. We will keep our word in good earnest, and hope you will do the same.

The Wako chief repeated in substance the same that the Tiwaconee did.

The Ketchi chief also repeated very much the same, with the exception that his people had no stolen horses.

[Enclosure No. 5.]

Talk of Caveeoka, chief of the Wichataws and Towash tribes.

My brother, we got the word that our Great Father had sent commissioners here to see us, and that our red brothers, the Muscogees, Cherokees, Chicasaws, and Choctaws, were with them to make a big peace.

When we first heard it we were scared to death. Some of our
686 young men had been out on a war party and had stolen some of the commissioners' horses. We did not stop to get up our horses, but catched the first we could come to, and hurried here to meet you. We have heard your talk. It is a good one. Our hearts are glad of it.

Several years ago we made a treaty with Gen'l Dodge, which we have kept in faith ever since. It is the first council we have ever attended in Texas. We would not listen to the talk of their messengers. We did not want to make peace with Texas. Our young men were opposed to it. Texas began the war upon us first; and, besides, we want to hunt the mustang and the buffalo down on the Colorado. But now that our Great Father has sent us word to make peace, and our red brothers have told

to do it, we are determined to do it. From this day forward there
ill be no more killing and stealing from Texas by our people, and
ere shall be peace as long as the sun rises and sets. We chiefs have
ought upon it and come to this conclusion. Our captains here have
d the talk and they will carry it to all our people, and from that time
rward there shall cease all troubles between the red and the white man.
ur young men have brought in all the horses that they stole from you
d delivered them up to you to-day. All the rest that we have will be
ought down and delivered at the next council when we meet you.
e are glad that our Great Father has thought of his red children here
the woods and has sent us some presents for our women and children.
e want our Great Father to build a house and live here close by us.
he question before we part: You have told us to quit warring and
tealing from Texas, which we agree to, but does our Great Father mean
hat we shall quit stealing from the Spaniards? Our young men must
ave horses from somewhere.

The Tiwacome chief spoke a second time, and said: "It is my duty to
ell the big captain, in the presence of this council, that my red brother,
he Keetchie chief, has told him a lie. He has said his people have no
orses stolen from Texas. I saw seven head myself about a week ago."

AUSTIN, TEXAS, *May 16th, 1847.*

SIR: I have the honour to submit the following report of my proceed-
ings under your instructions of 20th March:

On the 9th May, by previous appointments, I met the Comanche chiefs
Santa Anna and Pochuna Shanico, with a large party, about 90 miles west
of this place and held a friendly talk with them, at which time the ratifi-
cation of the treaty by the Senate and all matters appertaining to their
affairs, in accordance with your instructions, was fully explained to them.
They expressed much satisfaction at the action and renewed promises of
the Government, and were also contented with the alterations made to
the treaty by the Senate of the U. S., and wished me to inform the Gov-
ernment of their determination to carry into effect its several stipulations.

At the same time and place the Comanches were met by Baron John
O. Meusebach, gen'l agent of the German emigrations, and friendly
relations, in the form of a private treaty of peace, was concluded with
them. By the provisions of said contract they allow the colonists to
survey these grant and introduce settlements between the Llano
687 and San Saba rivers, promising to refrain from any act of hostility
towards them, and notify them of the approach of any hostile
bands that might approach their settlements, &c., for which they have
received presents and provisions to the amount of 2,000 dollars. The
contract further stipulates that all friendly intercourse, trade, &c., shall
be carried on under the supervision of the U. S. agents. There has been
great apprehension of hostilities on the part of the Indians whenever an
attempt was made to survey that section. A great part of the land has
been located by Americans for several years past, but the surveys could
not be completed, the Comanches heretofore objecting to every movement
of the kind.

I have great confidence in the beneficial effects of said arrangement,
as there will be no inducement for anyone to intrude into that section of
country for the purpose of surveying, &c., and it is greatly to the interest

of the German comp'y as well as the emigrants to preserve friendly relations with the Comanches.

I have also seen several of the small bands of friendly Indians (Shawnees, Delawares, and Lapans) that for some months past has resided a the line of our frontier settlements. They have all agreed to remove (some has already done so) above the line of settlements.

I have not as yet been able to see the chiefs of all the different tribs, but, so far as my information extends, we have no serious difficulties to apprehend.

The Comanches, Lapans, Tonkahuas, Caddoes, Ionies, Anandaco, Keechies, and the small bands of Shawnees, Delawares, and Cherokees are all perfectly peaceable, and I can hear nothing of a hostile character charged against them.

The Wacoes, Tewaconos, and Wichitas has committed numerous depredations on our citizens in the last few months. The latter part of February last they attacked a party of our citizens and killed two men. They are continually down on our borders, and have stolen several hundred head of horses.

In the immediate vicinity of this place, about 10 nights since, they stole 20 horses and made their escape with them.

I would again earnestly call the attention of the Department to the absolute necessity of taking prompt measures to chastise those Indians. It is a loss of time to think of inducing them to remain quiet by peaceful measures. They have been in treaty with the Texas and U. S. Governments for 4 or 5 years, and broken their treaty engagements almost as soon as made, and are now doing more damage to our citizens than at any previous time, and as their chief, Aquaquash, says, "they were born thieves, and nothing but force will prevent them from stealing." They not only depredate on the whites, but steal from the friendly Indians, and must, in a short time, unless taken in hand, cause much difficulty, as neither our citizens nor the friendly Indians will put up with them much longer. The ranging companies on our frontier, as at present stationed, can effect nothing. They are in the immediate vicinity of the settlements while those thieving bands are concocting their plans for campaigns, and when they come down and steal they move with such speed that they can not be overtaken before they reach their own country, and although they have been known to be hostile they have never been followed to their homes. Capt. Howe, U. S. dragoons, who is in command of
688 the frontier, says, when applied to on the subject, that he has "no orders to send troops into the country occupied by the Indians." They steal our horses and kill our citizens with perfect impunity. The Comanches and all the Indians that are here are extremely anxious that the Government should send troops into the Indian country, and particularly that those bands should be broken up. They offer their services as guides whenever the Government will order a force sufficient for the purpose.

The number of warriors directly engaged in the matter can not, from the best information that I can get, exceed 200. They are badly armed. One company of rangers with a few friendly Indians could soon put a stop to these proceedings without in the least interfering with our friendly relations; in fact, it would do more than any one thing to preserve peace

In order more effectually to inform the Department, I have made an arrangement with a party of the Comanche, Caddoe, and Delaware chiefs to accompany me and hold a treaty with those bands, and, if possible, ascertain their numbers, location, intention, disposition, etc. I leave this place to-morrow for that purpose, and shall visit all the bands on our borders previous to my return, when I shall report the particulars of my several interviews.

I would again recommend to the consideration of the Department the propriety of furnishing the presents for the Indians at as early a day as practicable. I find it difficult to explain the necessity of delay to the wild Indians; and much good would result from assembling the several tribes that are friendly and fully explaining to the assembled nations the treaty as it exists, and the determination of the Government to carry its several stipulations into full effect. It is but imperfectly understood at present, and I am certain that after said meeting I shall be able to exercise much more influence than at present.

I would also suggest that an order be procured from the Hon. Secretary of War to the commander of this frontier to station a sufficient guard at the treaty grounds during the council. The friendly Indians recommend it. Also to give such instructions that said command may assist the agent, if necessary, in enforcing the measures adopted by the Department for the regulating of our Indian affairs generally. From present appearances there will be a large number of Indians who are not in treaty—the Kioways, Muskeleros, Essequators, etc. Please furnish me with full instructions relative to the reception to be given them or other bands not in treaty should they come into council.

Having nothing more to report, I have the honor to be,

Very respectfully, your obt. servt.,

R. S. NEIGHBORS,
Spl. Agent, U. S.

Col. W. MEDILL,
Commissioner of Indian Affairs, Washington, D. C.

U. STATES SPECIAL IND'N AGENCY,
March 16th, 1848.

SIR: I have the honor to submit for your consideration a communication addressed to me by the agent of the "Texas Emigration and Land Company," with a copy of my answer thereto.

689 For the information of the Department I deem it proper to say that the lines proposed to be run for the purpose of establishing the boundaries of "Peters" Colony will pass directly through the country now occupied by the Keechies, Wichitas, Waccoes, Tah wac caros, Caddo's, Ionies, and Ten a wish Indians. It would cross the Brazos River a short distance above the "Comanche Peak" and recross not far from the mouth of the "Clear Fork" and strike Red River at or near the Wichita Mountains. Being fully convinced if the movement proposed be carried into effect that it will create hostilities on the part of those tribes, I submit the matter for the consideration of the Department without any suggestions.

I also deem it proper to state that since my arrival in the settlements I have had an opportunity of conversing freely with Lieut. Col. Bell, in

command of this frontier, in regard to the movements of the military force under his command, during which I was pleased to learn that there is no intention on his part or orders from the War Department to send a body of troops against the Indians, as alluded to in my report of the 2d inst. The Comanches, since my visit to their country, have been perfectly quiet, as well as all other bands on our frontier.

The various existing rumours published in the several newspapers by designing persons is well calculated to create confusion on this frontier, and not only render our citizens hostile towards the Indians, but disposed to oppose the efforts of those charged by the Government with sustaining friendly relations with them. Some of the officers commanding stations, for (as I suppose) the purpose of making themselves somewhat conspicuous, have been forward in those publications, particularly Captain H. McCullough, who has even gone so far as to address a communication to the legislature of this State on the subject of our Indian relations, and the probability of immediate hostilities with them—instead of which, should there have been sufficient cause, he ought to have reported it to his commanding officer (Col. Bell). The address alluded to was the subject of considerable discussion in the house of representatives, and your attention to which is particularly called in consequence of the excitement created amongst settlers on the frontier, and what is liable to continue so long as subordinate officers of the ranging service are permitted to interfere with those matters. I would therefore respectfully suggest that the attention of the commander of this frontier be called thereto in order that better discipline may be maintained. From the energetic measures heretofore carried on by Lieutenant Col. Bell for the preservation of peace with our several Indian tribes, it is presumed he will, after receiving instructions from the Department, use every exertion to check the evil.

Very respectfully, your obt. servant,

ROBT. S. NEIGHBORS,
U. States Special Ind. Agt.

To Col. W. MEDILL,
Com'r of Indian Affairs, Washington City, D. C.

690

U. S. SPECIAL IND. AGENCY,
Torrey's Trading House, July 9, 1849.

SIR: I have the honor to report that on the 7th inst. the Caddo chief Hadebah, the Ionie chief Tow i ash, and Kio we ah (the father of the Caddo boy that was killed by the volunteer troops), with a considerable party arrived at this place.

Finding that they were perfectly satisfied with the contract made with them in regard to that matter, and they having renewed their pledges to abide strictly by said agreement, the sum of five hundred dollars was paid over to the father of the boy killed.

In accordance with your suggestions, I endeavored to impress upon them the disposition of the Government to do them and all other tribes justice in every respect, which proved highly satisfactory, and they gave many assurances in return of a determination to remain at peace and abide by the suggestions of the Government and use all their influence to induce other tribes to do the same. These Indians and their associates

have conducted themselves with great propriety for the past year, and no act of theft or misdemeanor has been traced to them. They are settled temporarily on the Brassos River, and are making considerable crops of corn, and their condition generally is far superior to most of the tribes in Texas.

On the 2nd inst. the Camanche chief Ma pe che co pe, with a considerable party, arrived here and remained three days. He represents the Camanches to be friendly and quiet as usual, there being no disposition on the part of any band to commence hostilities or to depredate on our settlements. He reports that Santa Anna, Camanche chief, is still in Mexico on a foray with a large number of warriors, and is doing much damage to the Mexicans. Small detachments of his party are returning constantly, bringing in horses and captives in considerable numbers.

While the Camanches were here I made inquiry respecting the depredation committed at Brownsville, on the Rio Grande. The chief assures me that the Camanches had no hand in it, and from the best information I have been able to get it was done principally by a band of Lipans, that reside on the Rio Grande, assisted by Mexicans and probably some few white men, as Col. Kinney informed me that two white men acted as spies for the party that stole his mules and horses at the same time.

I deem it proper to call your attention to the fact that the authorities of Mexico are much to blame for the Indian depredations committed on her citizens, and those Indians that attacked Brownsville came in through Mexico, and crossed the Rio Grande to our side not far from the place of attack. Whilst at the settlements on the Rio Grande and El Passo I conversed freely with the Mexicans in regard to Indian matters, and found that at some of the small frontier towns, Frecidio del Norte, Carlos Haciendo, and some other places, they had made temporary treaties with the Apaches, Lipans, Camanches, &c. These Indians resort to those places in large numbers for the purpose of trade, where they procure powder, lead, arms, and provisions, and in fact everything necessary to enable them to carry on hostile operations against the settlements farther in the interior, and they find ready sale at these places for the horses and mules stolen from the interior settlements.

691 On my arrival at San Antonio I met a Mr. De Lacy, who is well known. He was in the employ of a mining co. and spent the past winter at Precidio del Norte, Carlos Rancho, &c. He informed me that the latter was a general rende'vous for all tribes on their forays. Early in the last spring there was assembled at one time 5 or 600 Indians from the various prairie tribes, Apaches, &c., and that it was well known that those Indians went from that point into the different Mexican settlements and stole horses and mules and brought them there where they found traders ready to purchase.

There is also a trading post on this side of the Rio Grande (Fort Leaton), a few miles from Precidio, where the Indians resort in great numbers.

Should the Government be disposed to prevent the Indians from going to Mexico, it will be absolutely necessary to regulate the trade in that section of country, for at present every inducement is held out to the different tribes by those traders to encourage forays into the Mexican settlements. I am informed by the Camanches that a large party of their

people, with the chiefs Buffalo Hump, Yellow Wolf, and Sabiata, visited the German settlements at Fredericksburg some time since for trade, and on their return a disease similar to the cholera broke out among them and killed many of the party; the balance of the band fled with precipitancy from the disease, and have gone high up in the prairies.

The Wacoes, Tah-woccaros, Keechies, and Wichitas have been perfectly quiet for some time past. They are making corn on the Brassos. The Lipans of Texas are also quiet, and raising corn on the Clear Fork of Brassos.

The Ton-que-was, after stealing a large number of horses from our frontier, made their escape from the upper prairies and have kept themselves out of reach.

The only depredation committed on this frontier for a long time past has been the stealing of horses, which is carried on by small renegade parties from the tribes generally, and is confined to no particular tribe. Whenever a demand for restitution has been properly made the principal chiefs and the tribes generally have shown every disposition to carry out the stipulations of the treaty.

On my return from El Paso I was much astonished to find every newspaper in this State filled with reports of Indian depredations and speaking strongly of the probability of a general Indian war, as I had detected no disposition of the kind in my intercourse with the Camanches during the trip to El Passo.

Finding on my arrival that large numbers of the several bands had visited Fort Graham during my absence, I deemed it proper to address a note to Lieut. Hamilton, com'd'g, requesting copies of the talks had with the Indians, &c., so that the Department might be correctly informed on that subject, and I have the honor herewith to enclose for your information the papers received from him, marked A, which will throw much light as to the disposition of our prairie tribes.

I have also the honor to call your attention to copy of Order No. 8, marked B, accompanying.

At the same time that every person at all acquainted with our Indian relations will acknowledge the great necessity of establishing a line
692 between the whites and Indians. There are few under present circumstances that could be found to acknowledge the justice or policy of carrying said order into effect. It is well known to the Department that there is no law or regulation to keep white men from going above the line of posts, and those posts are situated in a country that has always been occupied by the Indians, and the order can only affect those Indians that are most civilized and have for years past held continual intercourse with our settlers for the purpose of trade, &c.

If this order is acted upon previous to any treaty stipulations with the Indians it establishes nonintercourse, and the Indians, feeling oppressed, will not permit even the agent of the Government to visit their country in a friendly manner, and in retaliation will attack any of our citizens that may be found in the Indian country. I would respectfully recommend this subject for your early consideration.

During the time the Indians were at this post I deemed it proper at their earnest request to furnish them with a small quantity of provision.

I have also to notify you that I have discharged my interpreter, Jim Shaw, from the 25th June, he having become dissipated and faithless,

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ıd have employed temporarily Col. L. H. Williams as interpreter from ıe 7th July inst., all of which I hope you will approve.

I have the honor to be, very respectfully, your obt. servant,

ROBT. S. NEIGHBORS,
Special Ind. Agt. U. S.

Hon. W. MEDILL,
Com'r of Ind. Affairs, Washington, D. C.

TORREY'S TRADING HOUSE,
October 18th, 1849.

SIR: J. H. Rollins, esq., U. S. special agent, not having arrived, I deem it proper to inform you that on the 7th inst. I discharged from service my interpreter, L. H. Williams, and gave him a certified account for the pay due him for three months' service, amounting to $137.50 dolls. I have required him to make a written report of his proceedings, &c., during my absence, which I enclose for your information.

On my arrival I found that a large body of Indians, composed of several bands of Comanches, Caddoes, Ionies, Keechies, Wacos, and Tonkahuas, were assembled near the Clear Fork of the Brazos awaiting my return under the expectation that all of their matters would be fully discussed while I was in Washington, they being anxious to learn the wishes and intentions of the Department in relation to their affairs.

The agent not having arrived, I deemed it most proper not to see the Indians, and have consequently remained at this place awaiting his arrival for the purpose of turning over to him the public property in my possession. So far as I can learn the Indians are still disposed to be at peace, but are anxious to see the agent, as there are many matters to be discussed between them which will have a direct bearing on the further maintenance of peaceful relations with our wild Indians.

I regret much to learn on my arrival here of the death of two of the head chiefs of the Comanches, as they were true and devoted
693 friends to the whites, and the selection of some younger chiefs to succeed them may embarrass our friendly intercourse.

Should anything important transpire before the arrival of Mr. Rollins I will communicate particulars to you on receipt of proper information.

Very respectfully, your obdt. servt.,

ROBT. S. NEIGHBORS.

To Hon. ORLANDO BROWN,
Com'r of Indian Affairs, Washington, D. C.

[Enclosure.]

BARNARD'S TRADING HOUSE,
Octr. 9th, 1849.

SIR: Since your departure for Washington I have been in communication with the Comanches and other wild Indians in the limits of this agency, and so far have been unable to detect anything of an unfriendly nature among them. The Comanches have been visited with the cholera, which has been very fatal. The chiefs Santa Anna and Mopochocopie were both victims, with about three hundred of their people. They have been camped on the Brazos, near the Caddo village, all summer,

and consequently have committed no depredations on the frontier. The disease has been confined almost entirely to the Comanches; a few of the Caddos are the only exceptions. From what I can learn, they contracted the disease both in Mexico and at Fredericksburgh at about the same time in the bands of Santa Anna and Mopochocopie. Shan-ees has been appointed successor to Mopochocopie and promises peace. He wishes to hold a council with the agent soon, as he is anxious to have a talk about matters between the Genl. Government and his people.

The Caddoes have been at their village all summer and fall tending their corn, and have made a very large crop. Jose Maria complains that the citizens have surveyed and located his new village, and is anxious to hold a council with the agent about this matter. They have been very quiet and have committed no depredations thus far, and will continue peaceable with very little encouragement.

The Keechies, Wacos, Wichitas, and Tonkahuas are all quiet and awaiting your arrival to hear what the President has to say to them. The Tonkahuas wish to hold a council, and are willing to make a restitution of the stolen property they have in possession, which they will do if they receive the promise of friendly treatment.

The only difficulty with our Indians is occasioned by the imperfect understanding that exists between the authorities and themselves. The Comanches state that they are willing to enter into any arrangement with the agent that will be satisfactory, so far as regards their forays in Mexico. They say that they have not regarded their depredations in that country as any act contrary to the stipulations of their treaty with Messrs. Butler & Lewis, and consider any interference on our part, previous to some arrangement, as an act of aggression, although they have not retaliated for the attacks made upon them by our troops in
694 Mexico. They expect, on your arrival at this place, to receive the talk of the President in relation to this matter, and are very anxious to have some understanding with the agent.

So far as I can learn, the depredations committed on our western frontier have been confined to the Apaches and other Indians in the vicinity of the Rio Grande. Our friendly bands disclaim any participation in any of the attacks made on our citizens, and from the situation occupied by them since your absence I am satisfied that such is the case.

I have the honor to be, very resp'y, yours, &c.,

L. H. WILLIAMS, *Interpreter.*

To ROBT. S. NEIGHBORS, Esq.,
Special Indn. Agent.

BRAZOS AGENCY, TEXAS,
April 30, 1857.

SIR: Since my return to Texas I have lost no opportunity of informing myself in regard to the actual condition of Indians on our immediate borders outside of the Indian reserves, and have conversed freely with the commanding officer of this military department, the resident agents, and the Indians in relation to them. It appears that the Wichitas are very destitute, having lost or eat nearly all their horses. Some of them has this spring visited this agency and have procured seed corn for planting, and by the advice of Spl. Agent Ross are now planting corn at their

cillage, near the mouth of Big Wichita. I learn also that the Ten a wish and No co me bands of Comanches have had intercourse with the chiefs at Comanche Agency, and are anxious and willing to settle down at once on the reserve lately obtained from the Choctaws. The present condition of those Indians fully justify me in calling your attention to this subject, and to urge this as a favorable opportunity to take the preliminary steps towards opening the new reserve and colonizing the Wichitas and other Indians thereon, as both the time and the Indians concerned appear to be favorable for that purpose. If measures has not already been taken, I would respectfully suggest that a competent person or U. S. engineer officer be selected to define the boundaries of the new reserve.

I would also respectfully suggest that immediate measures be taken to have a permanent military post located within the limits of the reserve to assist the agents in the execution of their duties, and that the territory embraced within that reserve be attached to the Texas military department.

Maj. Genl. Twiggs has been assigned to the command of this department. He is an officer of great experience in Indian matters, and his command already extends to the south and west boundary of the reserve. Of all the officers in the service, I know of none more competent or suitable to take charge of a post of so much importance as Col. A. S. Johnson, of 2nd Cavalry, whose regiment is now on duty on this frontier, and who has cooperated with the Indian agents for the past year. I would request that he be assigned to that post.

By the adoption of these suggestions, I feel confident that success will attend the efforts proposed to be made of at once colonizing the
695 Wichitas and other Indians, and that our frontier will be soon relieved of the serious depredations that has heretofore interrupted its quiet.

Hoping that you will at once bring this subject to the notice of the Hon. Sec'y of Interior, and that instructions may be given accordingly,

I am, very respectfully, your obt. servt.,

ROBT. S. NEIGHBORS,
Superrising Agent Texas Indians.

CHAS. E. MIX, Esq.,
Actg. Comr. Indian Affairs, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, September 28, 1897.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to be in receipt, by reference of the Department for report, on the 17th day of June last, of a letter addressed to you by the Assistant Attorney-General of the United States, requesting an official statement of all payments to the Choctaw Nation or the Chickasaw Nation, or to persons of African descent formerly held in slavery among said nations, or their descendants, either as a part of the principal of the sum of $300,000 agreed to be paid under article 3 of the treaty of April 28, 1866 (14 Stats., 769), or as interest on the said sum.

In reply to the call of the Assistant Attorney-General, the following

statement is respectfully submitted of payments made to the said nations, viz:

PAYMENTS TO THE CHOCTAW NATION.

Appropriation of July 26, 1866 (14 Stats., 259), under 46th article of the treaty		$150,000.00
Appropriation of July 26, 1866, for interest (14 Stats., 259), under same article		11,250.00
Appropriation of April 10, 1869, for interest (16 Stats., 39), under same article		11,250.00
Appropriation of May 17, 1882, for education of freedmen (22 Stats., 72)		7,500.00
Appropriation of March 3, 1885 (23 Stats., 366), to be placed to the credit of the Choctaws on the books of the Treasury, computed as follows:		
Balance of principal due Choctaws	$67,500	
Deduct overpayment of interest, 1867, amounting to	87,500	
Deduct for same in 1868	7,875	
	15,375	
		52,125.00
		232,125.00

PAYMENTS TO THE CHICKASAW NATION.

Appropriation of July 26, 1866 (14 Stats., 259), under 46th article of the treaty	$50,000.00
Appropriation of July 26, 1866, for interest (14 Stats., 259), under same article	3,750.00
Appropriation of April 10, 1869, for interest (16 Stats., 39), under same article	3,750.00
Appropriation of May 17, 1882, for education of freedmen (22 Stats., 72)	2,500.00
	60,000.00

696 In 1888 and subsequent years the Choctaw Nation paid to the Choctaw freedmen, out of the general trust fund of the nation, the sum of $7,300, at the rate of $100 per capita, to those who desired to remove from the Choctaw Reservation.

The letter of the Assistant Attorney-General is herewith returned.

Very respectfully,

W. A. JONES, *Commissioner.*

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[Choctaw Nation, etc., v. U. S., etc., No. 18932.]

DEPARTMENT OF JUSTICE,
Washington, D. C., April 17, 1897.

The SECRETARY OF WAR.

SIR: I have the honor to request, for use in the above case, certified copies of all communications between Maj. S. H. Long, of the topographical engineers, and the Secretary of War, from September 10, 1820, to January 8, 1821, inclusive, with a statement of what the records show as to the date of receipt of the respective communications from Maj. Long, and with a statement of the date when Maj. Long reported his arrival in Washington on his return from his expedition.

Very respectfully,

J. E. DODGE,
Assistant Attorney-General.

[First indorsement.]

OFFICE CHIEF OF ENGINEERS, U. S. ARMY,
April 23, 1897.

Respectfully returned to the Secretary of War.

There is no record in this office of any communication between Maj. S. H. Long, topographical engineers, and the Secretary of War,
698 between September 10, 1820, and January 8, 1821, nor of the time of the arrival of Major Long in Washington from his expedition.

JOHN M. WILSON,
Brig. Gen., Chief of Engineers, U. S. Army.

[Second indorsement.]

A. G. OFFICE, *April 27, '97.*

Respectfully returned to the Secretary of War.

No record has been found in this office from September 10, 1820, to Jan. 8, 1821, of any communications between Major S. H. Long, of the topographical engineers, and the Secretary of War, nor of the date of the arrival of Major Long in Washington from his expedition.

SAML. BRECK,
Actg. Adjutant-General.

[Third indorsement.]

RECORD AND PENSION OFFICE,
War Department, April 30, 1897.

Respectfully returned to the honorable the Secretary of War.

Copies, prepared for the seal of the Department, of such communications between Major S. H. Long, United States Topographical Engineers, and the Secretary of War, from September 10, 1820, to January 8, 1821, inclusive, as have been found on file or of record in this office are herewith inclosed, viz, letters from Maj. Long, dated September 14, 1820, and December 12, 1820, respectively, and record entry of a letter from the Secretary of War, dated November 24, 1820.

The records show that the letter from Major Long, dated September 14, 1820, was received some time in November, 1820, exact date not shown, and that the letter from Major Long, dated December 12, 1820, was received some time in January, 1821, exact date not shown.

Neither the date when Major Long reported his arrival in Washington on his return from his expedition nor the date and place of his official report has been found of record in this office.

F. C. AINSWORTH,
Colonel, U. S. Army, Chief of Office.

[Fourth indorsement.]

WAR DEPARTMENT, *May 4, 1897.*

Respectfully returned to the honorable the Attorney-General, inviting attention to the preceding indorsements and the accompanying copies of records on file in the Record and Pension Office, War Department, duly authenticated under the seal of the Department.

R. A. ALGER,
Secretary of War.

First report referred to in third indorsement above.

BELLE POINT, *September 14, 1820.*

SIR: I have the honor to inform you that the exploring expedition have arrived in safety at this place, having performed the duties assigned
699 them as far as it was practicable, in their condition. Having traversed the country from the Council Bluff to the Rocky Mountain, the expedition proceeded northwardly along their base to the Arkansaw River, more than 150 miles. A party was detached under command of Capt. Bell to proceed down the Arkansaw—the remainder of our forces accompanied myself in quest of the source of Red River. Capt. Bell's report, herewith inclosed, will apprise you of the progress of his party. I regret that, for want of a guide and a proper knowledge of the country, that the detachment accompanying me were led into a mistake and explored the Canadian of the Arkansaw instead of the Red River. On parting with Capt. B.'s detachment, we proceeded southwardly about 150 miles further, in view of the mountains, and came to a brook running in a southeastwardly direction, which, according to Pike's map and description of the country, our only guide, we took to be a branch of Red River. After pursuing it downward more than 100 miles we fell in with a party of Indians of the nation of Bad Hearts, who confirmed us in this

pinion by repeatedly assuring us that the stream on which we were aveling was Red River. Having traversed it by our courses about 800 iles, by its meanderings more than 1,000, we arrived at its confluence ith the Arkansaw, and discovered our error when it was too late to trieve it. I am happy to inform you that no other accident or mis-ortune worthy of notice has happened to the expedition, except those casioned by the desertion of the men noticed in Capt. Bell's report, nd the loss of a few horses.

Maj. Bradford has advertised the deserters, offering a reward of $200 or their apprehension and the delivery of the manuscripts they took rom the gentlemen of the party.

The expedition will proceed hence to Cape Girardeau in the course of few days, when we propose to embark on board the Western Engineer nd sail for Louisville.

I beg leave to defer a more particular account of our proceedings to ome future opportunity.

I have the honor to be, sir, most respectfully, your obdt. and humble ervant,

S. H. LONG,
Maj., U. S. T. Engrs.

Hon. J. C. CALHOUN,
Sec. of War.

NOTE.—The second report referred to in the third indorsement above relates wholly to accounts, and has therefore not been printed.

Orders referred to in third indorsement above.

DEPARTMENT OF WAR,
November 24, 1820.

Maj. S. H. LONG, *Washington.*

SIR: You will repair to Philadelphia, when you will, as soon as practicable, furnish to this Department a report embracing the general character of the country traversed by the exploring expedition under your command, together with proceedings of the expedition, after
700 which you will report more particularly the character of the country, embracing its zoology, botany, and mineralogy. You will also furnish a map of the country, extending from the city of Washington westwardly to the Rocky Mountains.

I have, etc.,

J. C. C. [J. C. CALHOUN.]

[Choctaw Nation, etc., *v.* U. S., &c., No. 18932.]

DEPARTMENT OF JUSTICE,
Washington, D. C., May 1st, 1897.

The SECRETARY OF WAR.

SIR: I have the honor to request, for use in the above case, an official statement of the date when the letter of Generals Jackson and Hinds of October 19–21, 1820, transmitting the Choctaw treaty of October 18, 1820, was received by the Secretary of War, and certified copies of the letter of the Secretary of War to the President, transmitting the said treaty, and of all communications between the Secretary of War and the

President, from the date of such transmittal to January 8, 1821, in regard to the said treaty, or in regard to Major S. H. Long's explorations in the West.

Very respectfully,

J. E. DODGE,
Assistant Attorney-General.

[First indorsement.]

RECORD AND PENSION OFFICE,
War Department, May 5, 1897.

Respectfully returned to the honorable the Secretary of War.

As shown by the records on file in this office, a letter from Generals Andrew Jackson and Thomas Hinds dated at the "Choctaw Treaty Grounds," Oct. 19, 1820, containing papers relative to the Choctaw treaty, was received at this Department some time in December, 1820, exact date not shown.

A copy prepared for the seal of the Department of a letter dated December 12, 1820, from the Secretary of War to the President, transmitting the treaties between the Choctaws and other tribes or nations of Indians, is herewith inclosed. No record has been found of any other communications between the Secretary of War and the President subsequent to December 12, 1820, and prior to January 9, 1821, in regard to said treaty or in regard to Major S. H. Long's explorations in the West.

F. C. AINSWORTH,
Colonel, U. S. Army, Chief of Office.

[Second indorsement.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, May 14, '97

Respectfully returned to the Secretary of War.

No record has been found in this office covering the years 1820-21 of the letters of Generals Jackson and Hinds of October 19-21, 1820,
701 transmitting the Choctaw treaty of October 18, 1820, or of any communications between the Secretary of War and the President in regard to said treaty or in regard to Major S. H. Long's explorations in the West.

SAML. BRECK,
Acting Adjutant-General.

[Third indorsement.]

WAR DEPARTMENT, *May 15, 1897.*

Respectfully returned to the honorable the Attorney-General, inviting attention to the preceding indorsements hereon, and to the accompanying duly authenticated paper, referred to by Col. Ainsworth in the first indorsement.

G. D. MEIKLEJOHN,
Acting Secretary of War.

Letter referred to in first indorsement above.

DEPARTMENT OF WAR, *December 12, 1820.*

SIR: I have the honor to lay before you the treaties which have been concluded with Wea, Kickapoo, Chippewa, Ottawa, and Choctaw tribes or nations of Indians since the last session of Congress. I also lay before you the treaty with the Kickapoos, which was laid before the Senate at the last session, and returned with a resolution proposing certain amendments, amended as required by that resolution.

I have, etc.,

J. C. C. [CALHOUN].

The PRESIDENT OF THE UNITED STATES.

[Choctaw Nation, etc., r. U. S., No. 18932.]

DEPARTMENT OF JUSTICE,
Washington, D. C., May 24, 1897.

The SECRETARY OF WAR,
Washington, D. C.

SIR: I have the honor to request, for use in the above case, an official statement as to whether any communication appears to have been sent by the Secretary of War to the President, or to the Senate, or to any committee or member of the Senate, between November 1st, 1820, and January 8th, 1821, in regard to Major S. H. Long's explorations in the West.

If any such communications exist, I have the honor to request certified copies of them, and, in any event, a certified copy of Major Long's official report of February 20th, 1821, which is in the office of the Chief of Engineers.

Very respectfully,

J. E. DODGE,
Assistant Attorney-General.

702 [First indorsement.]

RECORDS AND PENSION OFFICE,
War Department, May 27, 1897.

Respectfully returned to the honorable the Secretary of War.

No record has been found in this office of any communications from the Secretary of War to the President, to the Senate, or to any committee or member of the Senate, between November 1, 1820, and January 8, 1821, in regard to Major S. H. Long's explorations in the West.

F. C. AINSWORTH,
Colonel, U. S. Army, Chief of Office.

[Second indorsement.]

OFFICE CHIEF OF ENGINEERS, U. S. ARMY,
June 15, 1897.

Respectfully returned to the Secretary of War, with a certified copy of report of Major Long, of Feb. 20, 1821, prepared for the seal of the War Department.

No record is found in this office of any communication from the Secretary of War to the President, or to either House of Congress, as mentioned within.

JOHN M. WILSON,
Brig. Gen., Chief of Engineers, U. S. Army.

[Third indorsement.]

WAR DEPARTMENT, *June 16, 1897.*

Respectfully returned to the honorable the Attorney-General, inviting his attention to the preceding indorsements hereon and the certified copy of report referred to by the Chief of Engineers.

G. D. MEIKLEJOHN,
Assistant Secretary of War.

703 In the Court of Claims. December term, 1896.

THE CHOCTAW NATION AND THE CHICKASAW Nation
vs.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians. } No. 18932.

Stipulation.

It is hereby stipulated and agreed, by and between the counsel representing the parties to this cause, that the following photographs
704 of maps, being among those referred to in the case of United States v. Texas (Record, pp. 253–4), may be filed by counsel for defendant as evidence and be treated as prima facie accurate copies of the originals of the maps or portions of maps of which they purport to be copies, the said originals being accessible in the library of the United States Geological Survey:

Humboldt's Carte Générale du Royaume de la Nouvelle-Espagne, Paris, 1811.

Pike's Chart of the Internal Part of Louisiana, Plates I and II.

Pike's Map of the Internal Provinces of New Spain.

Darby's Map of the United States, including Louisiana, in Darby's Emigrant's Guide, 1818.

Melish's Map of the United States, 1818.

Disturnell's Map of Mexico, 1847.

De Cordova's Map of Texas, 1849.

Marcy's Map of the Country upon Upper Red River, in Marcy's Report, 1852.

J. M. WILSON,
Counsel for Choctaw Nation.
H. E. PAINE,
Counsel for Chickasaw Nation.
L. A. PRADT,
Assistant Attorney-General.
J. M. VALE,
Counsel for Wichitas, &c.

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DEPARTMENT OF JUSTICE,
Washington, D. C., May 24, 1897.

The SECRETARY OF WAR,
Washington, D. C.

SIR: I have the honor to request, for use in the above case, an official statement as to whether any communication appears to have been sent by the Secretary of War to the President, or to the Senate, or to any committee or member of the Senate, between November 1st, 1820, and January 8th, 1821, in regard to Major S. H. Long's explorations in the West.

If any such communications exist I have the honor to request certified copies of them, and, in any event, a certified copy of Major Long's official report of February 20th, 1821, which is in the office of the Chief of Engineers.

Very respectfully,

J. E. DODGE,
Assistant Attorney-General.

(Indorsed:) Court of Claims. No. 18932. Choctaw Nation vs. The United States. War Dept. transmits certain information in reply to within request. Filed Aug. 13, 1897. Court of Claims.

[Indorsed.]

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MAY 24, 1897.

Department of Justice. For certified copies of certain communications between War Department and the Senate in 1820 and 1821, regarding explorations of Maj. S. H. Long, U. S. Engineers (480698 R. and P. Office), Record and Pension, for report. W. D. records, with 477558.

[Indorsed.]

RECORD AND PENSION OFFICE,
WAR DEPARTMENT,
May 27, 1897.

Respectfully returned to the honorable the Secretary of War.

No record has been found in this office of any communications from the Secretary of War to the President, to the Senate, or to any committee or member of the Senate, between November 1, 1820, and January 8, 1821, in regard to Major S. H. Long's explorations in the West.

F. C. AINSWORTH,
Colonel, U. S. Army, Chief of Office.

[4th indorsement.]

OFFICE CHIEF OF ENGINEERS, U. S. ARMY,
June 15, 1897.

Respectfully returned to the Secretary of War, with a certified copy of report of Major Long of Feb. 20, 1821, prepared for the seal of the War Department.

No record is found in this office of any communication from the Secretary of War to the President, or to either House of Congress, as mentioned within.

JOHN M. WILSON,
Brig. Gen., Chief of Engineers, U. S. Army.

[5th indorsement.]

WAR DEPARTMENT,
June 16, 1897.

Respectfully returned to the honorable the Attorney-General, inviting attention to the preceding indorsements hereon, and the certified copy of report referred to by the Chief of Engineers.

G. D. MEIKLEJOHN,
Assistant Secretary of War.

707 UNITED STATES OF AMERICA,
WAR DEPARTMENT,
Washington City, June 15, 1897.

I hereby certify that the sixty-eight pages hereto attached are a true copy of a report of Maj. S. H. Long, Topographical Engineers, to honorable J. C. Calhoun, Secretary of War, dated February 20, 1821, in the office of the Chief of Engineers, United States Army.

JOHN M. WILSON,
Brig. Gen., Chief of Engineers, U. S. Army.

Be it known that John M. Wilson, who signed the foregoing certificate, is the Chief of Engineers of the United States Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand, and caused the seal of the War Department to be affixed, on this sixteenth day of June, one thousand eight hundred and ninety-seven.

[SEAL.] G. D. MEIKLEJOHN,
Asst. Secretary of War.

708 PHILAD'A., *February 20th, 1821.*

No. 1.]

SIR: In obedience to your order of the 28th November, I have the honour to submit the following report embracing a concise account of the movements of the exploring expedition under my command, and a general description of the country explored by them. Altho' there are no very striking incidents to embellish the narration, yet the diversity of scenery presented to the view, the changes in the character and aspect of the country, and the variety of other interesting matter in the several departments of natural science, which have been subjects of particular attention, cannot fail to awaken a lively interest in the minds of an enlightened community, inasmuch as a discussion of them must lead to a knowledge of the condition and natural resources of a large portion of the U. States territory.

But as the principal object contemplated in making this report is a general view of the topography of the country, the subjects of description will be such only as are thought to be illustrative of such a view.

MOVEMENTS OF THE EXPEDITION.

The expedition embarked on board of the U. States steamboat "Western Engineer," at Pittsburg on the 4th of May, 1819. Their outfit consisted of such books, instruments, stationary, &c. (a return of which is on file in the Engineer Department), together with such provisions, &c., as

were deemed requisite at the commencement of their voyage. They proceeded down the Ohio River, making such observations and surveys along its banks as are calculated to augment the stock of intelligence already acquired in relation to that part of the country. This part of their route having been previously traversed by gentlemen of science, who have judiciously arranged and generously promulgated the intelligence they have collected, but little matter of a novel or interesting character could be expected. Yet an investigation of the numerous organic remains
709 and mineral productions discoverable on the Ohio throughout its whole extent, together with such an examination of the country as is requisite to a general description of its aspect, soil, and vegetable productions, were considered as objects meriting their attention in the discharge of their several duties.

On arriving at the confluence of the Ohio and Mississippi they proceeded up the latter to the Missouri, and then up the river last mentioned to the Council Bluffs, improving every opportunity of extending their researches in the various branches of natural science.

At the time of their arrival at the Council Bluffs the season was so far spent that it was deemed inexpedient to proceed further till the ensuing season, and the boat was accordingly dismantled and moored in a safe harbour, and quarters constructed for the accommodation of the party during the then approaching winter. Being located in a situation central to a variety of Indian tribes and nations inhabiting the neighbouring country, they were enabled to acquire a pretty extensive acquaintance with the manners, customs, and character of the nations in that quarter.

Surveys of the surrounding country were made, observations for determining the latitude, longitude, magnetic variation, dip, &c., were taken, the changes of the weather and other meteorologic phenomena were recorded, and such other duties performed as pertained to the pursuits of the expedition.

On the voyage up the Missouri a party was detached from the steamboat at Fort Osage, with instructions to proceed across the *the* country by land to the Kanzes village, and thence to the villages of the Pawneys, on the river Platte, and to return on board again at the Council Bluffs. This excursion was undertaken with a view of prosecuting the business of the expedition. The party had accomplished part of the duties assigned them when they were met, near the Kanzes village, by a war party of the Republican Pawneys and robbed of their horses, baggage, &c.,
710 which compelled them to give up the further prosecution of the enterprise. This misfortune rendered it necessary for them to change their route and shape their course for the Missouri, which they reached at Cow Island, having obtained much useful information concerning the country thro' which they passed and the natives inhabiting it.

On my way to the wintering post of the expedition, to which we had given the name of Engineer Cantonment, I pursued a course north of the Missouri from near its mouth to that place, taking sketches of the country preparatory to a topographical delineation. The observance of courses, distances, magnetic variations, &c., were objects of our particular care and attention in all the movements of the expedition.

On my arrival at the cantonment, which I reached on the 27th of May last, preparations were made with all convenient dispatch for reconnoitr-

ing the country westward to the Rocky Mountains, in conformity to your order of the 28th Feb'y, 1820.

The steamboat was ordered on topographical duties under the command of L't Graham, who proceeded with her down the Missouri to St. Louis, thence up the Mississippi to the De Moyen Rapids, and thence down the river to Cape Girardeau, taking such observations
No. 2 and sketches on the voyage as are requisite in constructing a chart of that part of the river and the adjacent country.

Having made the necessary arrangements and rendered our outfit for the western tour as complete as circumstances would permit, we commenced our march on the 6th June, all in good health, except Mr. Say, the zoologist and antiquary for the expedition. It may not be improper here to give a list exhibiting the names of the persons composing the party and the several capacities in which they served.

S. H. Long, maj. T. eng'rs, commanding expedition.
J. R. Bell, capt. l't artillery, journalist.
W. H. Swift, l't art'y, asst. topograph'r & comd'g guard.
Thos. Say, zoologist & antiquary.
E. P. James, botanist, mineralogist, & physician.
711 T. R. Peale, assistant naturalist.
Sam'l Seymour, lands*kip* painter, &c.
Joseph Bijou, guide and interpreter.
Abraham Ledoux, farrier and hunter.
Stephen Julien, interpreter.
H. Dougherty, hunter.
Zachariah Wilson, baggage master.
J. Duncan, D. Adams, & J. Oakley, engagees.
John Sweney, private of corps of artillery.
Joseph Verplank, Wm. Parrish, Robt. Foster, Mordecai Nowland, Peter Bernard, and Charles Myers, privates of the rifle regt., pack-horse men and hunters.

The number of horses and mules procured for the use of the party was 34, including several that were the property of individuals; so that we were able to have all the party mounted and had a sufficient number of horses for the transportation of baggage. In addition to arms, ammunition, a small quantity of provisions, and other necessaries for the tour, our outfit embraced a small supply of Indian goods for presents, not exceeding $150 in value.

The instruments for astronomical and other observations comprehended in our outfit were very limited both in number and variety. The mode of transporting them that we were compelled to adopt was by no means suited to the conveyance of delicate instruments or such as required much space in packing. We, however, took all belonging to the expedition that were in good repair and of a portable construction. The principal were the following: One sea sextant of 5-inch radius, one snuff-box sextant, one mercurial horizon with a glass frame, one patent-lever watch of an excellent quality, three travelling compasses, one measuring tape, two thermometers, and some few articles of apparatus for the use of the naturalists.

Every man being accoutred with a gun, bullet pouch, and powder-horn, and most of them with pistols, the exploring party pro-
712 ceeded westwardly to the Pawney villages situated on a branch of

Platte called the Loup Fork, thence southwardly to the Platte, thence westwardly along the valley of the Platte to the place where ssues from the Rocky Mountains. Having examined the mountains hat place and finding the country too hilly and broken to penetrate h horses within their range, we shaped our course southwardly along ir base, taking occasion to ascend the peaks and spurs of the moun-s, whenever a favorable opportunity presented, for the purpose of ertaining their geological character and that of the vegetables growing n them.

On arriving at the Arkansaw Capt'n Bell was detached with a small ty to ascend along the river, as far as it was practicable to travel with ses, and was able to ascend nearly thirty miles, when his further gress was interrupted by the proximity of the hills to the river.

Having descended the Arkansaw about one hundred miles to the nt whence it was judged expedient to strike upon a southwardly rse in quest of the source of Red River, the party was formed into o detachments, the one to proceed down the Arkansaw under the rection of Capt'n Bell, and the other to accompany me, with the view exploring the country southwardly to Red River and thence down its lley to the upper settlements thereon.

Capt'n Bell's party, with the exception of three soldiers last named in e foregoing list, who deserted on the march, arrived in safety at Belle oint, their place of destination, having performed the duties assigned em.

On separating from Capt. Bell, the detachment under my direction oceeded southwardly in view of the mountains about one hundred and fty miles and arrived at a creek having a southwardly course, which we ok to be tributary to Red River. Having travelled down its valley bout 200 miles, we fell in with a party of Indians of the nation of Kas-
kayas or Bad-hearts, who gave us to understand that the stream
13 along which we were travelling was Red River. We accordingly
continued our march down the river several hundred miles far-
ner, when, to our no small disappointment, we discovered that it was the anadian of the Arkansaw, instead of Red River, that we had been xploring. Our horses being nearly worn out with the fatigue of our ng journey, which they had to perform barefooted, and the season being o far advanced to admit of retracing our steps and going again in quest f the source of Red River, with the possibility of exploring it before he commencement of winter, it was deemed adviseable to give over the nterprise for the present and make our way to the settlements on the
Arkansaw. We were led to the commission of this mistake in
No. 3 consequence of our not having been able to procure a guide
acquainted with this part of the country. Our only depend-
nce in this respect was upon Pike's map, which assigns to the head waters of Red River the apparent locality of those of the Canadian. We continued our march, therefore, and arrived at Belle Point on the Arkansaw on the 13th of September, four days after the arrival of Capt'n Bell and his party.

Both parties suffered occasion'ly for want of food and water, but in general the game of the country yielded us an ample supply of the former, and the water courses, along which we for the most part travelled,

satisfied our demands for the latter. In regard to health, we were all highly favoured except Mr. Say, who was more or less indisposed throughout the tour. Some of the rest were occasionally affected with slight indisposition.

It is a source of much regret that we had the misfortune to loose some of our most valuable manuscripts by the desertion of three soldiers of Capt'n Bell's party, before mentioned. They deserted on the head waters of the Verdigris River, within about 200 miles of the upper settlements of the Arkansaw, taking with them three horses—the best belonging to the party—four saddlebags containing wearing apparel, and other things belonging to the gentlemen of the party, besides the following
714 manuscripts, viz: Journal of the tour, 1 number; Manners and customs of the Indians, 1 No.; Zoological descriptions and remarks, 1 No.; Vocabularies of the Indian languages, two numbers, all by Mr. Say, and one number, containing topographical notes and sketches, by Lt. Swift. In addition to the above the loss of a few horses that failed on the march was the only accident or misfortune worthy of notice that befel the expedition.

From Belle Point the exploring party proceeded across the country to Cape Giradeau, where they arrived on the 10th of October, having been occupied a little more than four months in the performance of the tour from the Council Bluffs.

Throughout the whole excursion the attention of the gentlemen of the expedition was constantly occupied upon the several subjects of investigation which were deemed essential to a topographical and scientific description of the country. In the discharge of our duties, however, we laboured under many disadvantages for want of a sufficient variety of instruments to furnish all the data proper and desirable in giving an account of the geology and meteorology of the *of the* country. A barometer would have been particularly useful, but out of three belonging to the expedition two were rendered completely unfit for use, partly by accident and partly by defects in their construction, and the third was in such a condition that it was not deemed advisable to take it with us, as it was not likely to remain fit for use but for a short time only. In ascertaining the humidity of the atmosphere a hygrometer would have been particularly useful, but it has never been in my power to procure one that had any claim to being accurate. In taking the various observations, however, that could be effected by means of the few instruments we had with us no pains were spared and no opportunities lost. Those in particular for the calculation of latitude and longitude were taken as often as it was thought necessary and with the utmost care and precision that circumstances would permit.

On our arrival at Cape Girardeau we had contemplated to
715 embark on board of "The Western Engineer," which was at that port, ready for our accommodation, and sail for Louisville, but, learning that the water of the Ohio was at that time too low to admit even the passage of a boat drawing no more than fifteen or sixteen inches of water, we were compelled to seek another mode of conveyance. Those of the expedition who had been on duty during the two last seasons, being very anxious to visit their homes, arrangements were accordingly made for their return to Philadelphia, where they would be enabled to

mpile and report the intelligence they had collected. Messrs. Say, le, Seymour, & Lt. Graham, being desirous to return by water, waited opportunity of taking a passage to New Orleans and thence to iladelphia.

Most of the curiosities collected by the expedition were placed in the rge of Mr. Say to be shipped for this place.

Lt. Swift was left in command of the steamboat and crew, with instrucns to proceed with them to Louisville as soon as the water would pert. He was instructed to leave the boat in the care of the pilot employed board of her, order her crew of U. S. soldiers to Newport, Kentucky, for nter quarters and subsistence, and report in person at Philadelphia r topographical duty.

NERAL DESCRIPTION OF THE COUNTRY TRAVERSED BY THE EXPLORING EXPEDITION.

Having given the foregoing brief account of the movements of the expedition, we next proceed to a consideration of the region o. 4 explored by them, which embraces a very considerable portion of the immense valley situated between the Alleghenny and Rocky ountains. The portion of this valley to which their attention has been ore particularly directed, and relative to which intelligence has been ollected, is situated between thirty-five and forty-two degrees of north atitude and eighty and one hundred and six degrees of west longitude, mbracing an extent of about 500 miles in width from north to south, and 1,300 miles in length from east to west.

716 As might be expected in a region of this extent, a great diversity of surface is presented to view, exhibiting all the varieties from the most level and unbroken to the most rugged and mountainous aspect. The most broken parts of this region are those situated along the Ohio, from its source to its confluence with the Mississippi, and on the west of the Missis-sippi between Red River and the Arkansaw and between the latter and the Missouri, extending westward about 400 miles from the Mississippi. The whole region in a geological point of *of* view is constituted of three varieties of formations which characterize the surface throughout, viz, transition, secondary, and alluvial. A tract, however, of considerable extent, including the Hot Springs of the Washitaw and extending northwardly to the lead mines back of St. Genevieve, has by some been considered as possessing a primitive character, but it is believed that the rocks discoverable therein are not sufficiently uniform to warrant such a decision. Moreover, an insulated tract of primitive country, surrounded by others exhibiting the most unequivocal marks of their being secondary, and at the same time presenting a similar conformation in their general aspect, is such an anomaly in natural science as requires more than ordinary proof to be admitted. The particular tract under consideration is probably analogous to other tracts within the region above specified, exhibiting a surface characterized by primitive formations, superincumbent upon others of a secondary character.

In order to give a more distinct conception of the country or region under consideration, it may be regarded as divisible into the following sections, viz: 1st. The country situated between the Ohio River and the

Alleghenny Mountains; 2nd, the country situated between the Ohio, Mississippi, and the Lakes; 3rd, the country situated between the Mississippi and Missouri rivers; 4th, the country situated between the Red and Missouri rivers west of the Mississippi and east of the meri-
717 dian of the Council Bluff, and 5th, the country between the proposed meridian and the Rocky Mountains, to be considered in the order here given.

OF THE COUNTRY SITUATED BETWEEN THE OHIO RIVER AND THE ALLEGHENNY MOUNTAINS.

The country on the south side of the Ohio, including the northerly parts of Pennsylvania, Virginia, and Tennessee, together with the whole of Kentucky, abounds in hills elevated in the vicinity of the Ohio from 4 to 8 hundred or a thousand feet above the water table of the river, and rising many hundred feet higher in the neighborhood of the Alleghenny Mountains. This section is watered by many streams of considerable magnitude tributary to the Ohio, the most important of which are the Monongahela, Kenhawa, Great Sandy, Licking, Kentucky, Salt, Greene, Cumberland, and Tennessee. These rivers are all navigable for keel boats, and many of them for steamboats, to very considerable distances during the boating season, which generally commences about the 20th of February and terminates early in June.

Occasional freshets contribute to render them navigable during short portions of the other months of the year, but no reliance can be placed in periodical returns of freshets excepting those of the spring season. Upon these rivers are extensive and valuable tracts of bottom land covered with deep and heavy forests, and possessed of a soil adapted to the cultivation of all the variety of vegetable products common to the various climates in which they are situated. The highlands back of the bottoms, altho' variegated with hills and valleys alternating with each other in quick succession, are generally possessed of a surface susceptible of being tilled, and in many instances of a soil equally as rich and prolific as that of the bottoms. In many parts of the country, however, the hills are abrupt and stony to such a degree as renders them unfit for tillage. The average produce per acre upon the farming lands of this section may be estimated at the following rates, viz: Indian corn
718 or maize, 40 bushels; wheat, 22; rye, 26; oats, 35; barley, 30; tobacco, from 12 to 15 cwt., and cotton, from 5 to 7 cwt. In regard to the products last mentioned, viz, cotton and tobacco, it should be observed that they are cultivated only in the southwesterly parts of this section, and that oats and barley are seldom cultivated except in the upper or northeasterly parts.

Of the population of this section, if we except the towns and
No. 5 villages and their immediate vicinities, as also a large portion of country surrounding Lexington, Ky., and another of considerable extent, including Nashville, Ten., it is yet but thinly inhabited, affording room for a population far more numerous and more widely diffused.

There are extensive tracts of country between the Alleghenny Mountains and the Ohio as yet almost entirely destitute of inhabitants, the most

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considerable of which are situated in the vicinity of the mountains; also the country generally between Tennessee River and the Mississippi.

As this section of country is pretty generally well known, the foregoing outline of its topography will suffice.

OF THE COUNTRY SITUATED BETWEEN THE OHIO, MISSISSIPPI, AND THE LAKES.

The section of country next in the order proposed is situated north of the Ohio River, and comprehends the States of Ohio, Indiana, and Illinois.

This section may be subdivided into three orders or varieties of country, which merit a separate consideration, viz, the hilly, the plain or rolling, and the valley country.

The hilly country, like that south of the Ohio, exhibits a very uneven surface, variegated with hills and dales confusedly distributed, and occupying about one-third part of the section under consideration. This portion of the country is of a triangular shape, limited on the south by the Ohio River, and on the N. west by an imaginary line commencing on the Mississippi near the Grand Tower and running in a direc-
719 tion nearly E. N. east till it approaches the easterly part of Lake Erie. On the east it mingles with the hilly country comprehended in the back parts of Pennsylvania and N. York. In short, the whole region situated between the Alleghenny Mountains and the imaginary line above specified, or, in other words, the country thro' which the Ohio and its tributaries, except the Wabash, have their courses, may be arranged under this head. The hills throughout the whole are very similar in respect to their altitudes, multiplicity, and confirmation.

Altho' the hilly country north of the Ohio, is in many places rugged and broken, yet a large proportion of it is susceptible of cultivation. No high mountains are to be seen; the hills usually rise from six to eight hundred feet above the common level, or about 1,000 feet above the water tables of the principal rivers and invariably present rounded summits. Interspersed amongst the hills are numerous fine tracts of arable land, which may in general be alleged of the valleys of the numerous rivers and creeks by which the country is watered. The soil upon the hills is generally productive, except where the surface is rocky, and the declivities abrupt, which is more particularly the case in the vicinity of the rivers, where the highlands are divided into numerous knobs, being cut by deep ravines with abrupt and precipitous banks.

The hilly country having been generally esteemed more healthy than either of the other varieties above mentioned, has acquired a more numerous population than the latter. As yet, however, no part of this section has its full compliment of inhabitants, if we accept as before the numerous towns and villages, and their immediate neighborhoods. In regard to the products of agriculture, the same remarks that have been made concerning the section south of the Ohio are equally applicable to the country under consideration, with the exception that cotton is cultivated only in the southwesterly extreme of this section, and tobacco is raised for domestic use only.

The most considerable rivers intersecting this section of countr
720 are the Muskingum, Scioto, Big Miami, and Wabash, all of whic
in the spring season are navigable considerable distances fro
their mouths. The valleys of these rivers give place to many extensi
and fertile bottoms, well adapted to cultivation, and producing the nece
saries of life in great abundance and variety.

The plain or rolling country is separated from that last under consi
eration by the imaginary line above mentioned. It is not to be inferre
however, that the junction of these two regions is distinctly marked b
any characters whatever by which the line can be traced with precisi
but that a gradual change of aspect is observable in travelling from o
variety of country to the other, and that the general direction of the li
indicated by this change is that specified above.

The other boundaries of this variety are the Mississippi on the we
and the Lakes Erie and Michigan, and the Fox and Wisconsin rivers
the north and east. The variety of country, altho' not entire
No. 6. destitute of hills, is almost throughout its whole extent possessed
an undulating or rolling surface, rising into broad and gen
swells in some parts, and subsiding into extensive flats or plains in othe

The valleys of numberless watercourses, bounded by abrupt bluffs
banks, afford some diversity to its aspect; and the bluffs in particular,
the principal streams, being cut by numerous ravines, contribute in ma
places to give the surface a hilly and broken appearance.

Altho' no part of this region can with propriety be denominated hil
especially when compared with the portion of country above considere
yet upon the Wisconsan, Fox, the head waters of Rock and Milwa'k
rivers, the country is considerably diversified with hills, or rather swe
and valleys. The only hills worthy of particular notice, not only
this variety, but in the whole section under consideration, are the Ocoo
and Smokey Mountains, which are broad and elevated ridges rather th
mountains. The former is situated about twelve miles north
721 the Wisconsan, 100 miles above its mouth, and the latter abo
forty miles southwest of the portage between the river just me
tioned and Fox River of Green Bay. The rivers of most note with
this region are the Wabash above the hilly country, before describ
the Kaskaskias, Illinois, Rock, and Wisconsan, tributary to the Miss
sippi, the Fox of Green Bay, the St. Joseph of Lake Michigan, and t
Maumee and Sandusky tributary to Lake Erie. These rivers are
navigable for boats of 10 or 15 tons burden when swollen by spri
freshets, but during the greater part of the summer and fall they have no
sufficient depth of water to be navigable for boats of burden, and
winter their navigation is entirely obstructed by ice. The spring fre
ets, consequent to the melting of the snow and ice, usually take place
the month of March, the southerly streams being open for navigati
much earlier than those in the north.

The prairies or champaigns east of the Mississippi are mostly situat
in this particular region, occupying at least three-fourths of it. Th
are waving or flat tracts of country of greater or less extent, separat
from each other by narrow skirts of woodland situated upon the marg
of rivers and creeks. They are generally possessed of a rich soil, yie
ing a spontaneous growth of grass and other herbage of a luxuri

appearance. They are well adapted to the cultivation of corn, wheat, rye, barley, oats, &c., of which they yield plentiful crops.

The prevailing opinion in regard to this portion of the country, viz, that it is unhealthy, appears too well founded to admit of refutation. The causes that contribute to render it so are very obvious. A large proportion of the prairies are so flat that much of the water deposited upon them by showers remains stagnant upon the surface till it is carried off gradually by evaporation, which renders the atmosphere humid and unhealthy. The vegetable mould, of which the immediate surface is composed, and the abundance of vegetables that spring and decay upon the ground, contribute largely to render these exhalations more deleterious. Altho' there are but few swamps and marshes and very
722 rarely pools of stagnant water to be met with in this region, still the general water table of this country is so little inclined that the streams having but a moderate descent are uniformly sluggish, often exhibiting the appearance of a succession of stagnant pools. The consequence is that the vegetable matter they contain, instead of being carried away by the strength of the current, is deposited upon the bottoms and sides of the channels, and while in its putrescent state serves to augment the quantity of noxious effluvia with which the atmosphere is charged.

The population of this region, compared with its extent, is very inconsiderable, and with the exception of a few villages the settlements are very scattering. Large portions of it, embracing the northerly parts of Indiana and Illinois, are almost entirely destitute of inhabitants. Many parts of the country must remain uninhabited for many years to come, on account of the scarcity of timber and other deficiencies, such as the want of mill seats, springs of water, &c., which are serious blemishes in the character of a large proportion of the country. There are, however, numerous and extensive tracts within this region possessed of a rich soil and in other respects well adapted for settlements, and presenting the strongest inducements for emigrants to occupy them.

The country of the third order agreeably to the subdivision above given, viz, the valley country, is situated upon the rivers, and is included within the hilly and plain countries above described. The tracts
No. 7 belonging to this order, usually denominated bottoms, are altogether alluvial, being composed of alternate layers of sand and soil deposited from the water of the rivers upon which they are respectively situated. The alluvion thus deposited, having once constituted a part of the surface of the countries drained by the water courses tributary to the rivers along which the deposits have been made, it will readily be inferred that the fecundity of the valleys will in some measure correspond with that of the countries whence their alluvion was derived.
723 Accordingly, we find the bottoms more or less productive in proportion to the fertility of the region in which the rivers take their rise and thro' which they flow.

In the valley of the Ohio the quality of the soil appears to improve from its source downward. The alluvion of which it is composed is supplied by the Allegheny and Monongahela rivers, which have their origin and courses in a hilly and mountainous country possessed in general of a saady surface. The alluvion supplied by other tributaries entering the Ohio at various points between its source and its mouth is of a better

quality, being composed principally of argillaceous and calcareous earth which are prevailing ingredients in the soil of the country drained by those tributaries.

It should be remarked, however, in relation to all the varieties of alluvia, that they are partially composed of the fine particles of decayed vegetable matter with which the water drained from the surface of the ground is invariably charged. This property in alluvial deposites often prevails to such a degree as to render soils apparently sandy and sterile remarkably productive. The alluvial bottoms thro'out the U. States afford innumerable examples of this fact, evidenced in the slimy deposites left upon the surface of the ground after an inundation, essentially contributing to the fecundity of the soil.

The most extensive tract of valley country east of the Mississippi is that situated within the bluffs of this river, usually denominated the American Bottom, extending from the mouth of the Ocoa or Kaskaskias River northwardly to that of the Missouri. This spacious bottom, altho' at present elevated much above the range of the highest freshets, is nevertheless alluvial. Its length along the Mississippi is about eighty and its average breadth about four miles. It is generally destitute of a timber growth except along the margin of the river, upon which there is a skirt of woodland extending almost from one end of the tract to the other. The alluvion of the American Bottom is composed of the rich mud brought down by the turbid Missouri, united with an abundance
724 of vegetable matter yielded by the waters of the Upper Mississippi, which also characterizes the bottoms of this extensive river from the Missouri downward to its mouth. Upon this bottom are situated the town of Kaskaskia, the villages of Prairie de Rocher, Harrison, Prairie du Pont, Cahokia, and Illinois, together with many other settlements.

On the same side of the river another large tract of valley land, called the Mississippi Bottom, commences a few miles below the mouth of the river Kaskaskias, and extends downward along the Mississippi between 50 and 60 miles, having an average width of about 3 miles.

This tract, in regard to soil and aspect, is of a character similar to that of the American Bottom, except that the former is more plentifully stocked with timber.

Besides these there are numerous other bottoms on the Mississippi, within the limits prescribed for this report, all of which are composed of a rich alluvion. Those in particular situated below the confluence of the Mississippi and Missouri are possessed of a soil exceedingly luxuriant, being composed, as before observed, of the rich and fertilizing mud deposited from the water of the Missouri. Most of them are covered with deep and heavy forests of timber, accompanied with a luxuriant undergrowth of vines, shrubs, grass, and other herbage.

The bottoms of the Wabash, Kaskaskias, Illinois, and Rock rivers are also made up of a rich alluvion of sand and loam containing a large proportion of vegetable mould. Their surfaces, like those of the Mississippi bottoms, are generally flat, exhibiting tabular elevations or benches, formed by the washing of the rivers at different periods. Large tracts of prairie land are to be met with upon them, but for the most part the proportion of woodland is amply sufficient to sup'ly the adjacent country with timber and fuel.

The valleys of these rivers differ from that of the Ohio not only in having a greater width but also in being limited on both sides
No. 8 by bluffs stretching along their whole length and maintaining
725 nearly a parallel direction; whereas the valley of the Ohio is bounded by abrupt hills irregularly disposed, in some instances protending far into the valley like promontories, and in others retiring from the river and affording room for bottoms of considerable extent.

The Ohio bottoms are uniformly clad in deep forests, except where they have been removed by settlers, no prairies worthy of notice making their appearance.

The valley country, from circumstances already detailed in allusion to the country constituting the second variety, is almost without exception unhealthy. But at the same time it appears evident that this evil gradually decreases in proportion to the increase of population and the consequent advancement of agriculture; for the products of the soil, which the bottoms yield in the greatest profusion, instead of being left to wither and decay upon the surface, are necessarily consumed in the subsistence of man and beast, in consequence of which one of the most fruitful causes of pestilential effluvia, viz., putrifying vegetables, is in a very considerable degree removed.

The prevailing timber growth of the region comprehending the two sections of country already described, is exhibited in the following list of trees, viz: Cottonwood, willow, sycamore, black walnut, pecan, coffee-tree, sweet and sour or black gum, red and water elm, hackberry, blue and white ash, linden, yellow and white poplar, catalpa, black and honey locust, buckeye, burr oak, white and black oak, mulberry, box elder, white dogwood, sugar-tree, white maple, wild cherry, red oak, hickory, ironwood, and hop hornbeam.

The foregoing constitute the principal timber growth of the valley country, and are to be met with more or less frequently thro'out the whole of it. Red beech is abundant in some parts of the valley of the Ohio and in those of many of its tributaries. It abounds also in the northerly parts of the States of Ohio and Indiana. Post oak, black-jack, and several other varieties of the oak, also chesnut, white and shell-
726 bark hickory, persimmon, &c., are sometimes found in the bottoms, but are more prevalent upon the hills and highlands. Pitch pine abounds in many parts of Ohio and Indiana, and generally in the neighbourhood of the Alleghenny Mountains. White pine occasionally makes its appearance in the northerly parts of Ohio. Red cedar is found in a great variety of places thro'out the country, but nowhere in great abundance.

The undergrowth of the several tracts of country above considered includes a great variety of shrubs, vines, brambles, grass, and other herbage, to be enumerated in a botanical catalogue daily expected from Dr. James. The most valuable timber trees are the white, post, and burr oak, the white and blue ash, the shellbark hickory, the black walnut, the cherry, the locust, chestnut, poplar, mulberry, beech, cottonwood, and linden. The two last mentioned are seldom used when other kinds of timber are to be had. The cottonwood is not only the most abundant timber growth upon the bottoms but is more widely diffused than any other, and in many places is the only variety of forest trees that make

their appearance, which, however, is more particularly the case westward of the Mississippi.

OF THE COUNTRY SITUATED BETWEEN THE MISSISSIPPI AND MISSOURI RIVERS.

We next proceed to a consideration of the country west of the Mississippi, and shall begin with that situated between this river and the Missouri. This section contains no mountains, or, indeed, hills of any considerable magnitude. The term rolling appears to be peculiarly applicable in conveying an idea of the surface of this region, altho' it is not entirely destitute of abrupt hills and precipices. The aspect of the whole is variegated with the broad valleys of rivers and creeks and intervening tracts of undulating upland united to the valleys by gentle slopes. Its surface is checkered with strips of woodland situated upon the margins of the water courses and dividing the whole into extensive pastures.

727 If we except those parts of the section that are contiguous to the Mississippi and Missouri, at least nineteen-twentieths of the country are completely destitute of a timber growth.

Within the valleys of these two rivers are extensive tracts of alluvial bottom, possessed of a rich soil.

The bottoms of the Missouri, in particular, are probably inferior to none within the limits of the U. States in point of fertility. Those of the Mississippi are very rich, but do not exhibit sym'toms of so great a fecundity as the former. The bottoms of both, in ascending the rivers become more sandy and apparently less productive.

The bottoms of the Missouri are, for the most part, clad in a deep and heavy growth of timber and underbrush to the distance of
No. 9. about 350 miles above its mouth. There are, however, prairies of considerable extent occasionally to be met with on this part of the river. Higher up, the prairies within the river valley become more numerous and extensive, till at length no woodlands appear, except tracts of small size, situated at the points formed by the meanders of the river.

The bottoms on the Upper Mississippi (that part of Mississippi situated above its confluence with the Missouri being distinguished by this appellation) contain less woodland in proportion to their extent than those of the Missouri. The prairies upon this river also become more numerous and extensive as we proceed upward.

The interiour of the country situated between the valleys of these rivers presents, as before remarked, a rolling aspect, inclining to hilly and broken in some parts, but generally variegated with gentle swells and broad valleys. Within this section are numerous small rivers and creeks, with valleys of a character similar to that of the Mississippi or Missouri, but not so fertile. Their valleys expand to a great width compared with the magnitude of the streams upon which they are situated, but are not bounded by abrupt bluffs, like those of the two rivers just mentioned. They are generally covered with a luxuriant
728 growth of grass and other herbage, and occasionally present copses of woodland of moderate extent. The timber growth of the bottoms is similar to that of the Mississippi bottoms—cottonwood,

blue and white ash, hackberry, black walnut, cherry, mulberry, hickory, and several varieties of the oak being the prevalent timber trees. The hills or highlands are in some instances covered with a scrubby growth of timber and furze, consisting of post oak, black jack, hazle, green brier, &c.

The soil of this section is probably equal, if not superior, to that of any other tract of upland of equal extent within our territory. But the scarcity of timber, mill seats, and springs of water, defects that are almost uniformly prevalent, must for a long time prove serious impediments in the way of settling the country.

The population of this section of country is located almost exclusively within the valleys of the Mississippi & Missouri, and in their immediate neighbourhood, extending upward along the former about one hundred and sixty, and along the latter about three hundred and twenty, miles above their confluence.

The most populous parts of the country are the county of St. Charles, situated near the junction of these two rivers—Cote Sans Desein and its vicinity; that part usually denominated the Booms Lick country, extending from the mouth of the Osage River upward along the Missouri to the river Charaton, and the country on the Mississippi, including the Salt River settlements, which have become numerous and pretty widely diffused.

Along the valleys, both of the Mississippi and Missouri, there are still innumerable vacancies for settlements, holding forth inducement for emigrants to occupy them, equally as strong as any of the positions already selected. The inhabited portions of this section have in many instances proved unhealthy, owing, in all probability, to the same causes that have been herein assigned in relation to the country east of the Mississippi, which operate with equal force and effect upon the inhabitants of this section.

OF THE COUNTRY SITUATED BETWEEN THE MISSOURI AND RED RIVERS.

729 WEST OF THE MISSISSIPPI AND EAST OF THE MERIDIAN OF THE COUNCIL BLUFF.

Altho' no precise limits can be assigned at the western boundary of this section, yet the meridian above proposed may be regarded as a line of division between the two regions, differing in their general character and aspect. It is not pretended that the immediate course of the line is marked by any distinct features of the country, but that a gradual change is observable in the general aspect of the two regions, which takes place in the vicinity of the proposed line. The assumed meridian is in longitude 96 degrees west, nearly, and crosses the Platte a few miles above its mouth; the Kanzes near the junction of its principal forks; the Arkansaw about 100 miles above the Verdigris, or 700 miles from its mouth; the Canadian about 150 miles from its mouth, and the Red River about 150 miles above the Kiamishy River.

The section of country under consideration exhibits a great variety of aspect, the surface being diversified by mountains, hills, and valleys, and occasional tracts of rolling country. Within the section is an extensive tract of bottom land deserving of particular consideration. It is

situated on the Mississippi, commencing a few miles below the
No. 10. Ohio and extending downward to Red River, uninterrupted by hills or highlands, and subject in many places to inundation from the freshets of the Mississippi. The bottom contains many large swamps, rendered almost impenetrable by a dense growth of cypress and cypress knees (the latter of which are conical excrescences springing from the roots of the cypress, and shooting up in profusion to the height of from 1 to 8 or 10 feet).

The most extensive of these swamps commences near the head of the bottom and passes southwestwardly, back of New Madrid, the Little Prairie, St. Francisville, &c., and terminates near the village of the Post of Arkansaw. The Great Swamp, the name by which this extensive morass is designated, is about two hundred miles in length and is of variable widths from 5 to 20 or 30 miles. The timber growth of this and of the other swamps, which are of a similar character but
730 inferior in magnitude, consists principally of cypress of a superior quality, but the difficulty of removing it renders it of little value to the country. Within the bottom are also numerous lakes, lagoons, and marshes, once, no doubt, parts of the bed of the Mississippi or of some of its tributaries that have their courses through the bottom.

Notwithstanding the general depression of this bottom, it contains many insulated tracts of considerable extent elevated above the range of the highest floods. The bottom, almost thro'out its whole extent, supports a dense and heavy growth of timber of an excellent quality, together with a luxuriant undergrowth of canebrake, vines, &c.

It may not be improper to remark in this place that great havoc is annually made amongst the timber of this tract by lumber and fuel mongers, who furnish the New Orleans market with large supplies of these articles, particularly of the former.

The bottom is bounded on the west by a chain of heights corresponding to the river bluffs on other parts of the Mississippi, but not arranged in so regular a manner. These are the commencement of a part of the hilly country hereafter to be considered.

The most considerable rivers that flow through the bottom and pour their tribute into the Mississippi are the St. Francis, the Big Black and White rivers, which are confluent; the Black and Washitaw, and Red river.

There are also a few other bottoms on the west side of the Mississippi of moderate size. The largest of them are Tywapata and Bois Brulé, situated a little above the mouth of the Ohio.

The hilly and mountainous country commences immediately west of the Mississippi bottoms, and extends westwardly about four hundred miles. Altho' the terms hilly and mountainous are expressive of the general character of the country, yet the following portions of this section may be enumerated as exceptions, viz: A tract of country comprehending St. Louis, Belle Fontaine, Florrissant, and extending southwestwardly so as to include the lead-mines tract, Belle View, &c.
731 This tract (which embraces the most populous part of the Missouri Territory) may be denominated rolling or moderately hilly. Considerable portions of the country situated between the Arkansaw and Red river', particularly in the vicinity of the latter, are also of this char-

acter. On the Arkansaw above Belle Point is an extensive tract of a similar description, as also many tracts of inferior size on the north side of the Arkansaw between the village of the Post and the Cadron settlements. On the south side of the Missouri is also an extensive tract of rolling country commencing at the river Le Mine, 6 miles a[illegible] Franklin, and extending upward along the Missouri, with occasional interruptions, to the Council Bluff. Such is the extent of this tract that it comprises almost the whole of the country situated between the assumed meridian line and the Missouri from Fort Osage upward. On the head waters of the Osage River and on those of its principal tributaries the country is said to be of a similar character also. To these may be added large portions of country situated on the Verdigris River, upon the Arkansaw above Grand River, and upon the Canadian from its mouth upward to the distance of about two hundred miles. The tracts here designated exhibit broad and elevated swells of land, separated from each other by deep and spacious valleys.

These portions of country are checkered with woodlands and prairies in many instances, alternating with each other in due proportion, for the accommodation of settlers, with farming and woodlands. On the Missouri above Fort Osage and on the Osage River, however, the proportion of woodland is very inconsiderable and the timber it affords of a scrubby character. The prairies here, as on the north of the Missouri, occupy at least nineteen-twentieths of the whole surface.

Some portions of the Red River country are also deficient in
No. 11. the quantum of woodlands allotted to them, but in general it may be observed that the more southerly regions are better supplied with timber than those farther north. The growth of the
732 woodlands interspersed amongst the prairies is mostly post oak, hickory, black jack, and white oak upon the highlands, and cotton-wood, sycamore, black and white walnut, maple, bur' oak, and several other trees common to the Western bottoms, in the valleys.

The bow wood, or, as it is sometimes called, the Osage orange, is found upon the southerly tributaries of the Arkansaw and upon the Red River and its tributaries. This tree is deserving of particular notice, inasmuch as it affords a timber extremely compact and elastic; its trunk and roots may prove very useful in dy'ing yellow and its fruit of importance in medicine.

The residue of this section, with the exception of the river bottoms and tracts of valley land scattered in various directions, thro'out the whole, is extremely hilly, broken, and mountainous, the hills and mountains rising from five to fifteen hundred feet above the water table of the country in which they are situated. They are exceedingly numerous, and are divided into a multiplicity of knobs and peaks having rounded summits and presenting perpendicular cliffs and abrupt precipices of transition sandstone. Their surfaces generally are covered with rocks of this description or flinty fragments strewed in profusion upon them. The growth upon them is almost exclusively pitch pine, cedar, scrubby oaks, hickory, haw, and bramble; the poverty of the soil in some instances and the scarcity of it in others excluding the more luxuriant vegetable productions common to the more level country in their vicinity.

The range of mountains situated between the Arkansaw and Red rivers gives rise to the following streams, all of which are sufficiently copious

for mill seats and abound in cascades and falls well adapted to such purposes, viz: The Blue Water, Kiamishy, and Little rivers, all of which are tributary to Red River; the Mountain, Rolling Cossetot, and Saline Forks of Little River; the Little Missouri, Cadeau, Washitaw, and the Saline, all confluent; the Maumelle Le Fevre, Petit Joan, and Poteau, tributary to the Arkansaw, besides numerous creeks of less note.

733 The hills and mountains between the Arkansaw and Missouri are equally prolific in water courses. The most considerable of these are the Verdigris, Neosho or Grand River, Illinois, together with the Troy, Mulberry White Oak, Spadra, Pine, Illinois, Point Remove, and Cadron creeks, tributary to the Arkansaw. The Little Red & White rivers, confluent streams; The Strawberry, Spring, Eleven Point, Current, Little and Big Black, all confluent and tributary to White River, which enters the Mississippi about thirty miles above the mouth of the Arkansaw.

The St. Francis and the Merameg have their sources in this broken region also, and discharge themselves into the Mississippi. Of the valleys of the rivers last enumerated, viz, those north of the Arkansaw and tributary to the Mississippi, it is observable that they are uniformly possessed of a rich soil, but owing to the excessive floods, occasionally brought down thro' them from the hills and mountains, their cultivation is very precarious. The valley of White River, and those of some few others, are in many places elevated above the reach of the highest freshets, and are not altogether subject to this inconvenience. But for the most part they are annually subject to be swept by overwhelming freshets, which prostrate fences, buildings, and every artificial structure that opposes their march. Even a fall freshet has been known to inundate plantations situated within the valleys to the depth of eight or ten feet. These floods are generally very sudden as well as excessive, to such a degree that on some occasions the water has risen in the course of one night more than twenty feet. By these sudden rises of the water the planter that in the evening thought his family and possessions secure from harm has been compelled the next morning to embark with his family in a canoe to save themselves from impending destruction, while his habitation, fields, cattle, and all his effects are abandoned to the fury of the torrent.

The streams rising in the same hilly country and tributary to the Missouri are the following, viz: The Bon Homme Creek, the
734 Gasconade, the Osage & its tributaries, the Le Mine, the Blue Water, and several streams tributary to the Kanzes River. Upon some of these, as the Bon Homme, Gasconade, and upon some few creeks beside, mills have been constructed, at which much of the lumber of the St. Louis market is sawed.

This section as yet is but very partially populated, altho' the
No. 12 inhabitants in some portions of it are considerably numerous. The most populous part of the section is the country situated immediately below the mouth of the Missouri, including the town of St. Louis and the villages of Florrissant and Carondelet, Herculaneum, St. Genevieve, Bainbridge, Cape Girardeau, Jackson, St. Michael, and the country in their vicinity; the Lead Mine tract, including Mine a Burton, Potosi, and Belle View, are considerably populous. The settlements in these places, however, if we except the sites occupied by the towns and

llages just enumerated, are still very scattering, and but a small pro-
ortion of the land susceptible of agriculture is yet under cultivation.
esides these there are numerous other settlements and several small
llages within this part of the Missouri Territory, distributed in various
irections and constituting a very scanty population. They are scattered
long the Missouri from its mouth to Fort Osage, a distance of more than
hree hundred miles, on the Gasconade, Merameg, St. Francis, Big
Black and several of its tributaries.

Within the Arkansaw Territory there are but few villages, and the
ettlements are as yet very scattering. The principal villages are the
Post of Arkansaw, situated about 60 miles above the mouth of the river;
Davidsonville on Strawberry River, a small village at the commencement
of the highlands on the Arkansaw, at a place called the Little Rock,
about 200 miles from the mouth of the river, selected as the seat of gov-
ernment for the Territory. Besides these there are a few other inconsid-
erable villages on the Arkansaw River, as also several of small size
situated in the country between the river just mentioned and Red
735 River, the most considerable of which are at Pecan Point, Mount
Prairie, Prairie D'Inde, &c. These villages contain but very
few houses, and those generally of a rude structure, a circumstance attrib-
utable only to the infancy of the Territory. The settlements of the
Territory are scattered along the Arkansaw from the White River Cut-off
(a channel uniting these two rivers at the distance of 30 miles above the
mouth of the former and 3 miles above that of the latter) to Belle Point,
a distance of about four hundred miles. On Little Red, White, and
Strawberry rivers are many scattering settlements, as also on the Wash-
itaw, Cadeau, Little Missouri, and the several forks of Little River.
The settlements upon Red River extend upward to the Kiamishy, a dis-
tance of about nine hundred miles from its mouth, following the meanders
of the river.

The settlements of the section under consideration are most numerous
in those parts represented in the foregoing description, as being variegated
with prairies and woodlands alternating with each other. In the valley
of the Arkansaw, however, which is generally clad in rich forests and
luxuriant cane brakes, prairies are seldom to be met with, and settlers
have had recourse to clearing the land necessary for their plantations.

In addition to the white settlements above pointed out, there are num-
erous villages and settlements of the Cherokee Indians, extending along
the Arkansaw, from the mouth of Point Remove Creek, upward to
Mulberry River, a distance of about one hundred miles. These settle-
ments in respect to the comforts and conveniences of life they afford
appear to vie with, and in many instances even surpass, those of the
Americans in that part of the country.

There are a few villages of the Quawpaws, or Arkansaws, and Choc-
taws, situated on the south side of the Arkansaw River, below the high-
lands. They are not numerous, subsist principally upon game and indian
corn of their own raising, and have even been friendly to the whites.

Upon the river St. Francis are a few settlements of the Delaware
736 & Shawneys, dispersed remnants of those unfortunate nations.

The several bands of the Osage nation resident upon the Verdi-
gris and upon the headwaters of the Osage River, also the Kanzes

Indians living upon the river bearing their name, are included within this section of the country.

In regard to climate, this region, as it expands thro' more than eight degrees of latitude, may be expected to afford a considerable variety; and the position is sufficiently verified by the commencement and progress of annual vegetation. The change of climate is also indicated by certain peculiarities observable in the vegetable products of different parts of the country. For example, vegetation begins at least a month earlier in the southern than in the northern extreme of the region. The Spanish moss disappears northwardly of the 33d degree of N. latitude. Cotton and indigo can not be cultivated to advantage in a latitude higher than thirty-six degrees, and the cane brake or reed cane is seldom found north of 37½ degrees.

In regard to the salubrity of the climate there is also a diversity, depending upon local circumstances rather than upon the
No. 13. temperature of the weather. A luxuriant soil yielding its products to decay and putrify upon the ground, also stagnant waters, flat lands, and marshes, in which the river valleys of this region abound, can not fail to load the atmosphere with pestilential miasmata, and render the country unhealthy wherever these occurrences are to be met with. But it is presumed that the causes of disease will gradually be exterminated as the population of the country increases.

Of the rivers of this region, there are many that are navigable for keel boats of several tons burthen, but all of them have more or less obstructions from shoals and frosts at different periods. The Arkansaw, which in point of magnitude and extent, deservedly ranks second amongst the tributaries of the Mississippi (the Missouri being the first), is navigable to the mouth of the Neosho, or Grand River, a distance of about 600 miles. In this part of the river, however, the navi-
737 gation is liable to obstructions, for want of sufficient depth of water, during a period of 2½ or 3 months, commencing in July. Occasional obstructions are also imposed by ice forming in the river during the winter season, but these are seldom of long continuance, the winters being usually short and mild. As the freshets of the river seldom prevail more than a few days at a time, and are usually attended by sudden rises and falls of the water, boats of moderate draft and burden only are suited to its navigation. The Arkansaw is navigable at all seasons for boats of this description about two hundred miles, which comprehends the distance by the meanders of the river from the Mississippi to the commencement of the high lands. Above the mouth of the Neosho, it spreads to a much greater width than below, and the water is more extensively diffused over its bed, which renders the shoals more numerous and the navigation more precarious.

This part of the Arkansaw can not indeed be considered navigable, even for perogues of a large size, except during the short period of a freshet, which is seldom long enough to complete a voyage of 100 miles.

The Red River is navigable during most of the year to the Great Raft, about 500 miles from its mouth. At this place it' navigation is effectually obstructed, except in a high stage of water when keel boats of 10 or 15 tons burden may pass through it and ascend several hundred miles above.

That part of the river situated above the raft, however, like the upper rt of the Arkansaw, is rendered impassable for boats of burden, by oals and sand bars.

The Washtaw tributary to Red River is navigable many miles. That rt of it particularly situated within the valley of the Mississippi and enominated Black River admits of constant navigation for boats of conderable burden. The Little River, which is also tributary to Red iver, together with its forks heretofore enumerated, is navigable in high ater. White River is navigable, in a moderate stage of water, between three and four hundred miles; also the Big Black, its principal 38 tributary and several branches of the river last mentioned, viz, the Strawberry, Current, Eleven Point, and Spring rivers.

The navigation of the St. Francis is blocked up near its mouth and endered impassable for boats of every description by rafts of logs and driftwood completely chocking the channel of the river, and in many places occupying the whole of its bed for the distance of several miles ogether. The Merameg is also navigable in a moderate stage of water o a very considerable distance.

The Gasconade, Osage, and Kanzes rivers are navigable in the spring season, but their navigation seldom extends far inland from their mouths, being obstructed by shoals or rapids.

Of the rivers tributary to the Missouri, it is remarkable that their mouths are generally blocked up with mud, consequent to the subsidence of the summer freshets of that river, which usually takes place in July. The reason is obvious: the freshets of the more southerly tributaries are discharged early in the season and wash from their mouths the sand and mud previously deposited therein, leaving them free from obstructions. These freshets having subsided, the more northerly branches discharge their floods formed by the melting of the snow at a later period. The Missouri being swollen thereby, backs its waters charged with mud considerable distances up the mouths of the tributaries before alluded to.

The water here becoming stagnant deposits its mud, and the tributaries having no more freshets to expel it, remain with their mouths thus obstructed till the ensuing spring. The lower part of the Canadian River, altho' it is included within the section under consideration, will be described in the sequel of this report in connexion with the rest of that river.

Of the animals found in the several sections of country above described, there are a great variety in almost every department of zoology. But as most of them are common in other parts of the U. States, they need not be enumerated here.

OF THE COUNTRY SITUATED BETWEEN THE MERIDIAN OF THE COUNCIL BLUFF AND THE ROCKY MOUNTAINS.

739

No. 14.

We next proceed to a description of the country westward of the assumed meridian and extending to the Rocky Mountains, which are its western boundary. This section embraces an extent of about four hundred miles square lying between 96 & 105 degrees of west longitude and between 35 and 42 degrees of north latitude.

Proceeding westwardly across the meridian above specified, the hilly country gradually subsides, giving place to a region of vast extent, spreading towards the north and south, and presenting an undulating surface,

with nothing to limit the view or variegate the prospect, but here and there a hill, knob, or insulated tract of table-land. At length the Rocky Mountains break upon the view, towering abruptly from the plains and mingling their snow-capped summits with the clouds.

On approaching the mountains no other change is observeable in the general aspect of the country except that the insulated knobs and table-lands above alluded to become more frequent and more distinctly marked. The bluffs by which the valleys of water courses are bounded present a greater abundance of rocks, stones lie in great profusion upon the surface, and the soil becomes more sandy and sterile. If to the characteristics above intimated we add that of an almost complete destitution of woodland (for not more than one-thousandth part of the section can be said to possess a timber growth), we shall have a pretty correct idea of the general aspect of the country.

The insulated tracts herein alluded to as table-lands are scattered thro'out the section and give to the country a very grotesque appearance. They rise from six to eight hundred feet above the common level, and are surrounded in many instances by rugged slopes and perpendicular precipices, rendering their summits almost inaccessible. Many of them are in this manner completely insulated, while others are connected with the plains below by gentle acclivities leading from their bases to
740 their summits, upon one side or other of each eminence. These tracts, as before intimated, are more numerous but less extensive in the vicinity of the Rocky Mountains than they are further eastward; and in the former situation they are more strikingly characterized by the marks above specified than in the latter.

The geological formations that present themselves along the declivities of these heights are principally horizontal strata of secondary sandstone and brec'ia or pudding stone alternating with each other. Blink stone prevails upon the surface of them in many places, but in general the superior strata are rocks of the description just before mentioned. These tracts are denominated tabular, not from any flatness of surface by which they are characterized, but from their appearance at a distant view and from the horizontal description of the stratifications imbedded in them. Their surfaces are usually waving, and in some instances rise into knobs and ridges of considerable height. Many of them are clad in scrubby timber growth of pitch pine, red cedar, scrubby oaks, etc., while others exhibit a bald or prairie surface.

By far the greater proportion of this section of country is characterized by a rolling and plain surface, which may be alleged not only of the space included within the limits above assigned, but of extensive portions of country north and south of it. Altho' the elevated table-lands, a description of which has just been given, are situated within this region, they occupy but a small proportion of it. In addition to these inequalities in the surface of the country, there are numerous mounds or knobs of different magnitudes and occasional swells of greater or less extent, which contribute to give a pleasing variety to the prospect. The country is also divided into extensive parterres by the valleys of rivers and creeks, which are usually sunk 150 or 200 feet below the common level and bounded in some places by perpendicular precipices and in others by bluffs or banks of gentle slopes.

Immediately at the base of the mountains and also at those of some
741 of the insular table-lands are situated many remarkable ridges, rising in the form of parapets to the height of between fifty and one hundred & fifty feet. These appear to have been attached to the neighbouring heights, of which they once constituted a part, but have at some remote period been cleft asunder from them by some extraordinary convulsion of nature, which has prostrated them in their present condition.

The rocky stratification of which these ridges are principally composed, and which are exactly similar to those of the insulated table-lands, are variously inclined, having various dips or inclinations from 45 to 80 degrees.

Throughout this section of country the surface is occasionally characterized by water-worn pebbles and gravel of granite, gneiss, and quartz, but the predominant characteristic is sand, which in many instances prevails almost to the entire exclusion of vegetable mould. Large tracts are often to be met with exhibiting scarcely a trace of vegetation.

The whole region, as before hinted, is almost entirely destitute
No. 15. of a timber growth of any description. In some few instances, however, sandy knobs and ridges make their appearance, thickly covered with red cedars of a dwarfish growth.

There are also some few tracts clad in a growth of pitch pine and scrubby oaks, but in general nothing of vegetation appears upon the uplands but withered grass of a stinted growth, no more than 2 or 3 inches high, prickly pears profusely covering extensive tracts, and weeds of a few varieties, which, like the prickly pear, seem to thrive best in the most arid and sterile soils.

In the vicinity of the Rocky Mountains, southwardly of the Arkansaw River, the surface of the country in many places is profusely covered with loose fragments of volcanic rocks. On some occasions stones of this description are so numerous as almost to exclude vegetation. A multiplicity of ridges and knobs of various sizes, containing rocks of this character, also make their appearance. All these formations seem to be superincumbent upon horizontal strata of secondary sandstone;
742 but the volcanoes whence they originated have left no vestiges by which their exact locality can be determined. In all probability they were extinguished previously to the recession of the waters that once inundated the vast region between the Alleghenny and Rocky Mountains.

Of the rivers that have their courses through this section those of most note are the Platte, the Kanzes and its forks, the Arkansaw, and the Canadian tributary to the Arkansaw. The Platte rises in the Rocky Mountains, and after an easterly course of about eight hundred miles falls into the Missouri at the distance of about seven hundred miles from the Mississippi. It derives its name from the circumstance of its being broad and shoal, its average width being about twelve hundred yards, exclusive of the islands it embosoms, and its depth in a moderate stage of water so inconsiderable that the river is fordable in almost every place. The main Platte is formed of two confluent tributaries of nearly equal size, called the North & South forks, both of which have their sources considerably within the range of the Rocky Mountains. They unite about 400 miles westward from the mouth of the Platte, having meandered about the same distance eastwardly from the mountains. Besides

these, the Platte has two considerable tributaries, the one, called the Ell
Horn, entering a few miles above its mouth, and the other, the Lon
Fork, entering about 90 miles above the same place. The valleys of th
Platte and its several tributaries are extremely broad and in many place
considerably fertile. They gradually become less fertile on ascendin
from the mouths of the rivers on which they are situated, till at lengt
they exhibit an arid and sterile appearance. The alluvion of which th
bottoms are composed contains a large proportion of sand, which, adde
to the nitrous and saline matter blended with it, occasions freque
appearances of complete barrenness.

Magnesia also appears to be a component part of the alluvion—a qualit
invariably derogatory to the fertility of any soil. The valley of th
Platte, from its mouth to its constituent forks, spreads to the widt
743 of ten or twelve miles and forms a most beautiful expanse of lev
country.

It is bounded on both sides by highlands elevated 25 or 30 feet abo
the valley, and connected therewith by gentle slopes.

The river in several places expands to the width of many mile
embosoming numerous islands, some of which are broad and considerabl
extensive, and all of them covered with a growth of cottonwood & willow
These are the only woodlands that make their appearance along the rive
and in travelling westward these become less numerous and extensive t
at length they entirely disappear. Copses and skirts of woodland aga
present themselves in the neighbourhood of the mountains, but they are
small magnitude, and the trees they furnish are of a dwarfish growt
For a distance of nearly two hundred miles, commencing at the confluen
of the North and South forks, and extending westwardly towards the mou
tains, the country is almost entirely destitute of woodland, scarcely a tr
bush, or even a shrub making its appearance.

The Platte is seldom navigable except for skin canoes requiring but
moderate depth of water, and for these only when a freshet prevails
the river. No attempts have been made to ascend the river in can
for any considerable distance, the prevalence of shoals and the rapidity
the current discouraging such an undertaking. The bed of the Platte
seldom depressed more than six or eight feet below the surface of t
bottoms, and in many places even less, and spreads to such a width th
the highest freshets pass off without inundating the bottoms, except
their lowest parts, the rise of the water on such occasions being no mo
than five or six feet.

In order to account in some measure for the diversity of soil observa
in the valleys of most of our Western rivers, it may not be i
No. 16. proper in this place to assign one of the principal causes th
operate in producing this effect. The alluvial deposits
which the river bottoms are formed consist of particles of mud and sa
more or less minute. The coarser and more ponderous particles are,
course, soonest deposited, while the finer are transferred by t
744 current to a greater distance and deposited nearer the mouths
the rivers. Thus it happens that the bottoms situated near
to the sources of the Western rivers are sandy and contain but a sm
proportion of *of* vegetable mould, while those nearer their mouths
generally furnished with a rich and fertile loam.

The Kanzes—or Konzay, as it is pronounced by the Indians—is made up of two considerable streams, heading in the plains between the Platte and Arkansaw rivers, called the Republican and Smoky Hill forks. Tributary to the former of these are the Solomon's and Saline forks, of less magnitude, rising also in the same plains. The Kanzes is navigable only in high freshets for boats of burden, and on such occasions not more than 150 or 200 miles, the navigation being obstructed by shoals. The character of this river and its several branches is similar to that of the Platte and its tributaries. Woodlands are seldom to be met with except in narrow skirts and small copses along the water courses. Much of the country situated upon its forks is said to be possessed of a good soil, but is rendered uninhabitable for want of timber and water. The bottoms are possessed of a light, sandy soil, and the uplands are in many places characterized by aridity and barrenness. The surface for the most part is rolling, but in some instances inclines to hilly.

That portion of the Arkansaw included within the section under consideration has a bed or channel varying in width from 400 yards to more than a mile, exclusive of islands. In the neighbourhood of the mountains its width does not exceed fifty or sixty yards, gradually growing wider in its progress downward. Its valley, for a distance of more than one hundred miles from the place where it issues from the mountains, contains a considerable timber growth, principally of cottonwood, in skirts bordering upon the river, which occasionally embosoms islands clad in the same kind of growth. Every appearance of timber, however, is lost on a farther progress eastward, and nothing is presented to variegate or adorn the prospect in land but a broad expanse of waving prairies.

745 Proceeding eastward along the river, its valley gradually widens and the bluffs or banks by which it is bounded become less elevated and abrupt. The bottoms rise but a few feet above the water level of the river, but the freshets, having a broad bed like that of the Platte to expand upon, seldom rise so high as to inundate the bottoms. This part of the Arkansaw, as before hinted in a former part of this report, can not be considered as navigable except for boats of light burden during the prevalence of a freshet. In a very low stage the river is said to disappear in many places, the whole of its water passing off thro' the immense body of sand of which its bed is composed.

The Arkansaw, having a direction nearly east and west, has no great variety of climate to traverse in its course from the mountains to the Mississippi; consequently there is no succession of thaws taking place upon the river calculated to maintain a freshet for any considerable length of time. The freshets are occasioned by a simultaneous melting of the snow throughout the whole extent of the river and by showers of rain, which, falling upon a rolling surface, is quickly drained off and causes sudden but seldom excessive rises in the river. I have witnessed in the Arkansaw no less than three considerable rises and falls of the water in the course of two weeks.

The most considerable streams tributary to this part of the Arkansaw are the Negracka, or Red Fork, and the Newsewketonga, or Grand Saline, on the south, and the Little Arkansaw and Stinking Fork on the north side. The Negracka rises within 50 or 60 miles of the mountains, and, after meandering eastwardly between four and five hundred miles, unites

with the Arkansaw at the distance of about 900 miles from the mouth of the latter.

The Newsewketonga has its source in the plains between the Arkansaw and Canadian rivers, and unites with the former about 150 miles below the Negracka.

The head waters of the Little Arkansaw interlock with those of the Smoky Hill Fork of the Kanzes and are discharged into the
746 Arkansaw about 1,500 miles above its mouth. The Stinking Fork runs amongst the head waters of the Neosho and enters the Arkansaw about 800 miles from its mouth.

Besides these there are many other streams of smaller size entering on both sides of the river.

The Canadian rises at the base of the Rocky Mountains, and, after a meandering course of about one thousand miles, enters the Arkansaw at the distance of about 550 miles from the mouth of the latter.

No. 17. This river has generally been represented upon the maps of the country as having a N. easterly course, whereas its source is nearly in the same latitude as its confluence with the Arkansaw; consequently its general course is nearly east. In its course it forms an extensive curve to the southward, leaving a broad space between it and the Arkansaw, in which several streams many hundred miles in length, tributary to both these rivers, have their origin and courses. This river has a broad valley bounded by bluffs from two to five hundred feet high, faced with rocky precipices near its source and by abrupt declivities intersected by numerous ravines lower down. It has a spacious bed, depressed but a few feet below the bottoms, and exhibiting one continued stratum of sand thro' the greater part of its length. It is the channel thro' which the water of a vast extent of country is carried off, yet during most of the summer season it is entirely destitute of running water thro'out a large proportion of its extent—a circumstance in proof of the aridity of the region drained by it. Fifty miles above its mouth it receives at least two-thirds of its water from its principal tributary, denominated the North Fork. This fork rises between the Arkansaw and Canadian and has a meandering course of about 700 miles. Six miles above the fork just mentioned another tributary enters the Canadian, called the South Fork, about half as large as the other. Notwithstanding the supplies afforded by these two tributaries, the Canadian has not a sufficiency of water in summer to render it navigable even to their mouths.

746½ At a distance of 20 miles above its mouth a chain of rocks (slaty sandstone) extends across the bed of the river, but occasions no considerable fall. A little above the entrance of the South Fork is another of the same description, forming rapids of moderate descent not more than 400 yards in length. With these exceptions, the bed of the river presents no rocky formations (in place) for more than four hundred miles from its confluence with the Arkansaw. About three hundred and fifty miles from that point beds of gypsum or plaster of paris begin to make their appearance in the bluffs fronting upon the river, and upon the declivities of the highland knobs a great abundance of this article is to be met with, not only upon the Canadian but also upon the upper part of the Arkansaw. The hills in which it is imbedded are composed of ferrugenous clay and fine sand of a deep-red complexion. Hence the

Arkansaw derives the coloring matter that gives to its waters their reddish hue.

The bottoms of the Canadian, in the neighbourhood of its mouth, are possessed of a soil exceedingly prolific, but, like those of the other rivers of this region, the more remote their situation from the mouth of the river the more sandy and sterile in their appearance.

Its valley is plentifully supplied with timber of an excellent quality for a distance of about two hundred miles on the lower part of the river, and the highlands for nearly the same distance are agreeably diversified with prairies and woodlands. This portion of the river is situated eastward of the assumed meridian, and the country upon it has already been partially described in a former part of this report.

The woodland growth upon the lower part of the Canadian consists of cottonwood, sycamore, white, blue, and black ash, swamp cedar, red elm, coffee tree, yellow wood, sugar tree, box elder, white and black walnut, wild cherry, mulberry, &c., in the river valley, and hickory, white and post oak, black jack, black oak, &c., upon the adjacent uplands. On a progress westward the most valuable of the timber trees above mentioned disappear, till at length occasional groves of cottonwood,
747 mingled with mulberry, red elm, and stinted shrubbery of various kinds constitute the only woodlands of the country. On this occasion it may be observed that the cane or reed, the peavine, pawpaw, spice wood, hop vine, and several other varieties of shrubs and vines common only to rich soils are nowhere to be found within this section or westward of the proposed meridian.

The country of the Canadian above that last considered, or that portion of it west of the assumed meridian, appears to be possessed of a soil somewhat richer than the more northerly parts of the section, but exhibits no indications of extraordinary fecundity in any part of it. Proceeding westward a very gradual change is observable in the apparent fertility of the soil, the surface becoming more sandy and sterile, and vegetation less vigorous and luxuriant. The bottoms appear to be composed in many places almost exclusively of loose sand, exhibiting but few signs of vegetation. Knobs and drifts of sand, driven from the bed of the river by the violence of the wind, are piled in profusion along the margins of the river thro'out the greater part of its length. It is remarkable that these drifts are, in many instances, covered with grapevines of shrubbery appearance, bearing fruit in the greatest abundance and perfection. The vines grow to various heights, from eighteen
No. 18. inches to four feet, unaccompanied in some instances by any other vegetable, and bear a grape of a dark purple or black colour of a delicious flavour, and of the size of a large pea or common gooseberry.

The waters of this section, almost in every part of it, appear to hold in solution a greater or less proportion of common salt and sulphate of magnesia, which, in many instances, render them too brackish or bitter for use. Saline and nitrous efflorescenses frequently occur upon the surface in various parts of the country, and incrustations of salt of considerable thickness are to be found in some few places south of the Arkansaw River. As to the existence of rock salt in a mineral state some doubts are to be entertained if the decision is to rest upon the character of the

specimens exhibited as proofs of the fact. The several examples
748 of this formation that I have witnessed are evidently crystalline salt, deposited by a regular process of evaporation and crystallization, and formed into concrete masses or crusts upon the surface of the ground.

Indications of coal are occasionally to be seen, but this mineral does not probably occur in large quantities. The geological character of this section is not such as to encourage the search for valuable minerals. A deep crust of secondary sandstone occasionally alternating with breccia, with here and there a superstratum of rocks of a primitive type, are the principal formations that present themselves.

Of the animals of this region the buffaloe or bison ranks first in importance, inasmuch as it supplies multitudes of savages not only with the principal part of their necessary food, but also contributes to furnish them with warm clothing. The flesh of this animal is equal, if not superior, to beef, and affords not only a savoury but a wholesome diet. A large proportion of this section, commencing at the assumed meridian and extending westward to within one hundred miles of the Rocky Mountains, constitutes a part only of their pasture ground, over which they roam in numbers to an incredible amount. Their range extends northwardly and southwardly of the section as far as we have any particular account of the country. The animal next in importance is the wild horse, a descendant, no doubt, of the Spanish breed of horses, to which its size, form, and variety of colours show that it is nearly allied. In regard to their contour, symmetry, &c., they afford all the varieties common to that breed of horses. They are considerably numerous in some parts of the country, but not abundant. They are generally collected in gangs, but are sometimes solitary.

Grisley or white bears are frequently to be seen in the vicinity of the mountains. They are much larger than the common bear, endowed with great strength, and are said to be exceedingly ferocious. The black or common bears are numerous in some parts of the country, but none
of these animals are found remote from woodlands, upon the
749 products of which they depend in a great measure for their subsistence.

The common deer are to be met with in every part of this section, but are most numerous in the vicinity of woodlands. The black-tailed or mule deer is found only in the neighbourhood of the mountains. Hilly and broken lands seem to afford them their favorite pasture ground. The elk is also an inhabitant of this section, but is not to be found remote from woodlands. The cabric, wild goat, or, as it is more frequently called, the antelope, is common. They are numerous, and with the buffaloe are the common occupants of the plains, from which they retire only in quest of water.

Wolves are exceedingly numerous, particularly within the immediate range of the buffaloe. Of these there are many varieties, distinguishable by their shape, size, and colour.

The marmot, commonly called the prairie dog, is more abundant thro'out this section than any other quadruped. They live in villages scattered in every direction, and thickly inhabited, a single village in some instances occupying a tract of ground three or four miles in extent.

Their habitations are burrows three or four inches in diameter, situated at a distance of fifteen or twenty paces asunder. The habits and manners in other respects are peculiarly interesting. They subsist on vegetables, their flesh is similar to that of the groundhog, and their hair equally as coarse.

The beaver, otter, mink, and muskrat are numerous upon the rivers, creeks, and rivulets issuing from the mountains, and are generally upon those whose valleys are supplied with woodlands.

Badgers, rac'oons, hairs, polecats, porcupines, many varieties of squirrels, panthers, wild cats, lynxes, and foxes of several species are also inhabitants of this section. Besides these the country affords a great variety and abundance of reptiles and insects, both venomous and harmless.

Of the feathered tribes no very considerable variety is observable.
750 The turtledove, the jay, the barn swallow, the quail (partridge of the Middle States), the owl, whip-poor-will, and lark, which seem more widely distributed over the territory of the U. States than any other birds, are found here. Several varieties of the hawk,
No. 19. containing some new species, the bald and grey eagle, the buzzard, raven, crow, jackdaw, magpie, turkey, two or three varieties of the grouse, pheasant, pigeon, many varieties of the sparrow and fly-catcher, the whooping or sandhill crane, curlew, sandpiper, together with a variety of other land and water fowls, are more or less numerous in this region. It is remarkable that birds of various kinds common to the seacoast, and seldom found far in the interior, pervade the valley of the Mississippi to a great distance from the Gulf of Mexico, and frequent the regions adjacent to the Rocky Mountains.

In regard to this extensive section of country I do not hesitate in giving the opinion that it is almost wholly unfit for cultivation, and, of course, uninhabitable by a people depending upon agriculture for their subsistence. Altho' tracts of fertile land, considerably extensive, are occasionally to be met with, yet the scarcity of wood and water, almost uniformly prevalent, will prove an insuperable obstacle in the way of settling the country.

This objection rests not only against the section immediately under consideration, but applies with equal propriety to a much larger portion of the country. Agreeably to the best intelligence that can be had concerning the country both northward and southward of the section, and especially to the inferences deducible from the account given by Lewis & Clark of the country situated between the Missouri and the Rocky Mountains above the river Platte, the vast region commencing near the sources of the Sabine, Trinity, Brasis, and Colorado, and extending northwardly to the 49th degree of N. latitude, by which the U. States territory is limited in that direction, is throughout of a similar character. The whole of this region seems peculiarly adapted as a range for buffaloe, wild goats, and other wild game, incalculable multitudes of which
751 find ample pasturage and subsistence upon it.

This region, however, viewed as a frontier, may prove of infinite importance to the U. States, inasmuch as it is calculated to serve as a barrier to prevent too great an extension of our population westward and secure us against the machinations or incursions of an enemy that might otherwise be disposed to annoy us in that part of our frontier.

The Indians of the section last described, whose numbers are very limited compared with the extent of country they inhabit, will be considered in the sequel to this report.

OF THE ROCKY MOUNTAINS.

This range of mountains has been distinguished by a variety of appellations, amongst which the following are the most common, viz, Rocky, Shining, Mexican, Chippewyan, Andes, &c. The general course of the range is about N. NW. or S. SE. Its breadth varies from fifty to one hundred miles. They rise abruptly out of the plains which lie extended at their base on the east side, towering into peaks of great height, which renders them visible at the distance of more than one hundred miles eastward from their base. They consist of ridges, knobs, and peaks variously disposed, among which are interspersed many broad and fertile valleys. The more elevated parts of the mountains are covered with perpetual snows, which contribute to give them a luminous and, at a great distance, even a brilliant appearance, whence they have derived the name of Shining Mountains.

Between the Arkansaw and Platte, on a small creek tributary to the former, is situated a high part of the mountains denominated "Highes Peak" on many maps of the country, and said to be more elevated than any other part within the distance of 150 or 200 miles. This peak whose summit has been accounted inaccessible, was ascended by a detachment of the expedition conducted by Dr. James, from which circumstance it has been called James Peak. Its elevation above the
752 common level, ascertained by a trigonometrical measurement, is about eight thousand five hundred feet. But the correctness of the statement that it is higher than any other part of the mountains within the distance above mentioned is questionable. Judging from the position of the snow near the summits of other peaks and ridges at a great distance from it, a much greater elevation is apparent.

The mountains are clad in a scattering growth of scrubby pines, cedar, and furze, and exhibit a very rugged and broken aspect. The rocky formations embodied in them, contrary to the opinion generally received, are uniformly of a primitive character, consisting of granite, gneiss, quartz rocks, &c. It should be remarked, however, that a deep crust of secondary rocks, the same as the stratifications of the plains before mentioned, appears to recline against the east side of the mountains extending upward from their base many hundred feet.

At the base of James Peak, above designated, are two remarkable springs of water, considerably copious and strongly impregnated with fixed air. At the place also where the Arkansaw issues from the mountains are several medicinal springs on the north side of the river, rising in a small area at the base of the mountains. These springs were discovered by Capt'n Bell, and in consequence I have taken the
No. 20 liberty to call them Bell's Springs. They are six in number, one of which is strongly impregnated with fixed air, another with sulphureted hydrogen, and the rest with salt and sulphur, the waters all being more or less chalybiate.

OF THE INDIANS INHABITING THE SECTION OF COUNTRY LAST DESCRIBED.

This country is exclusively inhabited by savages, no other beings of the human family having fixed their abode within it. They consist of the following tribes and nations, whose numbers, places of residence, and mode of life will be subjects of consideration as far as our knowledge of them extends.

The Otoes, or, as they are called in their own language, the Wahtooh-tah-tah, reside in a perman't village of dirt or earthen
753 lodges on the south bank of the river Platte, about fifty miles from its confluence with the Missouri and thirty miles southwestwardly from the Council Bluff. The principal remnant of the old Missouries, who have become extinct as a nation, have their residence with the Otoes. In the course of the last winter, whilst these Indians were absent from their village on their winter hunt, their town was partly burnt by the Sauks, which misfortune induced them to take up a temporary abode upon Salt River, a few miles from their former residence, but it was generally supposed that they would return again and rebuild their town. The name of their principal chief is Shongotongo, or Big Horn; probable number of lodges, 100; of persons, 1,400. The Otoes and Missouris are esteemed a brave people and are friendly towards the Americans.

They are at war with the Sauks, Foxes, Sioux, Osages, Iatans, and other Indians west of the Missouri. A small band of the Ioways resided for some time with these Indians, but not being able to harmonize with them lately, returned to their old village on the river De Moyen of the Mississippi. Their principal chief, usually called Hard Heart, being dissatisfied with the conduct of his tribe, remains with the Otoes.

The Omawhaw, or, as it is commonly written, the Maha, Nation exultantly boasts that they have never *have* killed an American. On the contrary, they have ever been very friendly and still hold the Americans in the highest estimation. Under the influence of their present principal chief, Ongpatunga, or the Big Elk, they never go to war except in the pursuit of a predatory war party, in consequence of which the traders have given them the reputation of being cowardly. But the history of this people shows that they have been as ambitious of martial renown and have acquired as large a share of it as any of their neighbours. They formerly resided in a village of dirt lodges upon Omawhaw Creek, a small stream entering the Missouri about 200 miles above the Council Bluff,
but they have recently abandoned it and are about building a
754 town on Elkhorn River. Their number of souls is about 1,500.

The Poncahs have their residence in a small village of dirt lodges, about 180 miles above Omawhaw Creek. This tribe have a common origin with the Omawhaw and speak the same language. Their principal chief is called Smoke Maker. Their number is about 200 souls.

The tribes above enumerated evidently sprung from the same common stock, the language of all being radically the same. They have a tradition that their fathers came from beyond the lakes.

The Pawneys are a race of Indians distinct from the preceding, their language differing radically from that of the Indians alluded to. The

Pawneys consist of three distinct bands that have their residence at present on a branch of the river Platte, called the Loup Fork, about 60 miles from the mouth of the latter and between 108 and 115 miles westward from the Council Bluffs. The three bands are distinguished by the appellations of the Grand, the Republican, and the Loup Pawneys. The two former acknowledge a common origin, but the latter deny having any natural affinity with them, tho' their habits, language, &c., indicate the same ancestry. They live in three villages, included within an extent of about seven miles on the north bank of the Loup Fork, all compactly built.

The village of the Grand Pawneys is situated immediately on the bank of the river, and contains about 180 earthen lodges, 900 families, or 3,500 souls. The name of the principal chief of this village is Tarrarecawaho, or Long Hair.

The village of the Republican Pawneys is situated about three miles above that of the Grand Pawneys; contains about 50 lodges, 250 families, or 1,000 souls. The name of their principal chief is Fool Robe, who is very much under the influence of Long Hair. This band separated many years since from the Grand Pawneys and established themselves upon the Republican Fork of the Kanzes River, where they were visited by Pike on his tour westward. They seem to be gradually amalgamating with the parent stock, and their village wears a
755 declining aspect.

The village of the Loup Pawneys, or Skeree, as they call themselves, is situated four miles above that last mentioned, immediately on the bank of the river. It contains about 100 dirt lodges, 500 families, or 2,000 souls, making an aggregate of 6,500 souls belonging to the three villages. The name of their principal chief is the Knife Chief. A few years since the Loup Pawneys had a custom of annually sacrifising a human victim to the Great Star (Venus), but this was abolished by their
No. 21 present chief, aided by the noble daring of his gallant son. They appear unwilling to acknowledge their affinity with the other Pawneys, but their language being very nearly the same, proves them to be of the same origin.

Altho' these bands are independent of each other in all their domestic concerns, government, &c., yet in their military operations they generally unite, and warfare becomes a common cause with them. Their arms are principally bows & arrows, lances, war clubs, and shields, with some few firearms. They are expert horsemen, but generally fight on foot. They are more numerous and accounted more formidable in warfare than any other combination of savages on the Missouri, the Sioux excepted. Their confidence in their own strength gives them a disposition to domineer over their weaker neighbours. They are at war with the Osages, Kanzes, Sioux, Iatans, Kaskayas, Kiaways, Shiennes, Crows, &c.

The several tribes above described cultivate maize, or Indian corn, pumpkins, beans, watermelons, & squashes.

They hunt the bison, or buffaloe, elk, deer, beaver, otter, the skins of which they exchange with traders for fusees, powder, and lead, kettles, knives, strouding, blankets, beads, vermillion, silver ornaments, and other trinkets. They prefer the Meckinaw guns, blankets, &c., and will give a higher price for them, knowing that they are greatly superior to those furnished by American traders.

The Konzes and Osages, both of which reside in the vicinity of the meridian assumed as the eastern boundary of this section, may here be admitted to a more particular consideration than that already
756 allowed them in this report. The Kanzes Indians reside in a village of earthen lodges, situated on the north side of the river, near the mouth of the Blue Earth Creek, entering the river about one hundred miles from its mouth. Their village consists of about 130 lodges, and contains about 1,500 souls. This tribe was formerly very troublesome to our traders, frequently robbing them of their goods, but since the establishment of the upper posts on the Missouri they have become very friendly. They are at war with most of the other tribes and nations herein enumerated, except the Osages and Otoes, with the last of whom they have lately made peace thro' the agency of Major O'Fallon, Indian agent for the Missouri. Several Indians of the Missouri tribe reside with them.

The Osages are divided into three bands or tribes, called the Grand Osage, the Little Osage, and Clermo's band. The two former of which reside in permanent villages situated on the headwaters of the Osage River, and the last upon the Verdigris about sixty miles from its confluence with the Arkansaw.

According to Pike, whose estimate of their numbers is probably near the truth, the Grand Osages amount to 1,695, the Little Osages to 824, and Clermo's band to 1,500 souls, making an aggregate of about 4,000. These Indians are not accounted brave by those inhabiting the country to the north and east of them, but are the dread of those west and south of them. Altho' they have occasionally been chargeable with depredations committed against the whites, they have been provoked to the perpetration of them by aggressions or trespasses on the part of the latter, or else the depredations have been committed by malcontents of the nation who will not be governed by the council of their chiefs. These Indians hold the people and Government of the U. States in the highest estimation, and have repeatedly signified their strong desire to be instructed by them in the arts of civilization. The U. States have purchased from them large and valuable tracts of country for mere trifles—which the Osages have been the more willing to relinquish, under the pros-
757 pect and encouragement given them that the Americans would become their neighbors and instructors. They are in a state of warfare with all the surrounding tribes and nations of Indians except the Kanzes. It is said they are about forming an alliance with the Sauk & Fox Indians of the Mississippi, and that the latter are preparing to remove to their country. They have recently driven the Pawneys of Red River from their place of residence, and compelled them to seek an abode upon the head waters either of the Brassis or Colorado.

The Kanzes and Osages are decendants from the same common origin, with the Otoes, Missouris, Omawhaws, and Puncahs, to which may be added the Quawpaws and several other tribes not mentioned in this report. The languages of all of them are radically the same, but are now distinguished by a variety of dialects.

OF THE ARRAPAHOES, KASKAYAS, KIAWAYS, IATANS, AND SHIENNES.

These nations have no permanent residences or villages, but roam sometimes in society and sometimes separately over the tract of country constituting the section last described. They hunt the bison principally

and migrate from place to place in the pursuit of the herds of that animal, upon the flesh of which they chiefly subsist. Being thus accustomed to a roaming life, they neglect the cultivation of the soil, and are compelled to subsist almost exclusively upon animal food. They formerly carried on a limited trade with the Spaniards of Mexico, with whom they exchanged dressed bison skins for blankets, wheat flour, maize, &c., but their supplies of these articles are now cut off by a war which they are at present waging against that people. They also at distant periods held a kind of fair on a tributary of the Platte near the mountains (hence called Grand Camp Creek), at which they obtained Brit-
No. 22 ish merchandize from the Shiennes of Shienne River, who obtained the same at the Mandan village from the British traders that frequent that part of our territory. Last winter they traded a great number of horses and mules with a party of white men who had ascended Red River, but whence the party came could
758 not be ascertained; it however appeared probable that they were citizens of the U. States or possibly freebooters from Barataria.

The Shiennes associated with these wandering tribes are a small band of seceders from the nation of the same name residing upon Shienne River. They are said to be daring and ferocious. They are, however, kept under restraint by the energy and firmness of their chief.

The Bears Tooth, who is the principal chief of the Arapahoes and the head chief of all these bands, possesses great influence over the whole. His mandates, which are uniformly characterized by discretion and propriety, are regarded by his subjects as inviolable laws.

The Kaskaya and Kiaway languages are very difficult to acquire a knowledge of. Our interpreter, who had lived several years with them, could only make himself understood by the language of signs with the aid of a very few words of the Crow language, which many of them appear to understand. Indeed, many of the individuals of these different nations seemed to be ignorant of each others' language, for when they met they would communicate by means of signs, with now and then an oral interjection, and would thus maintain a conversation apparently without the least difficulty or misapprehension.

These nations are at war with all the Missouri Indians, as far down as the Osages, who are also included amongst their enemies, and it was rumored that hostilities had recently commenced between them and the Shiennes upon the river of the same name.

Their implements of war consist of the bow and arrow, the lance, war club, and shield. They usually fight on horseback, and as horsemen display great skill and activity.

Their habitations are leather lodges, which serve them as tents on their march and dwellings at the places of their encampment.

Widely diffused as these Indians are, and never embodied, it is impracticable even to conjecture their numbers with any degree of probable accuracy. They roam not only thro'out the section above specified, but extensively within the range of the Rocky Mountains.

759 The foregoing remarks about the Indians of this part of the country have been made, for the most part, agreeably to the suggestions of Mr. Say, whose attention was particularly directed to researches of this nature. But, having been robbed of his notes upon the customs,

manners, languages, &c., of the Western Indians by the men who deserted from Capt'n. Bell's party, he could give no further account of them than what his recollection could supply. Of the Kanzes, Otoes, Pawneys, and other Indians near the Council Bluffs his notes are considerably extensive, but the vessel on board of which they, with other articles, were shipped from N. Orleans, having been obstructed in her passage up the Delaware by ice, we have not yet received them.

OBSERVATIONS EMBRACING SEVERAL TRAITS OF CHARACTER COMMON TO THE INDIANS OF THE WESTERN COUNTRY.

An accurate and extensive knowledge of the numerous tribes and nations of Indians living within the U. States territory can only be obtained by a long residence with them. They are seldom communicative except upon the subjects intimately connected with their personal experience or present interest and welfare. In regard to matters of an abstract or metaphysical nature their ideas appear to be very limited; at any rate very little is known of their sentiments upon subjects of this kind, owing, in a great measure, to the inability of the persons usually employed as interpreters to converse intelligently concerning them. The delicate trains of thought and reflection attributed to them by writers who have attempted to enlarge our acquaintance with the Indian character usually have their origin in the ingenuity of the writers themselves. The exploits of their war parties, and particularly those of individuals, are often recounted, but are seldom transmitted to succeeding generations, unless they are characterized by some signal advantage to the tribe or nation to which the party or individual belongs. Hence their history is very defective, affording but few incidents and characterized by no regular series of events. In regard to the numbers of persons and
760 strength of the several tribes and nations, also the ages of individuals, no precise statements can be made; all the information given under these heads is, almost without exception, conjectural. In relation to subjects of this kind, the Indians are either ignorant or wilfully silent, and deem it an impertinent curiosity that prompts a stranger to the investigation of them.

Notwithstanding these obstacles in the way of acquiring authentic and credible information concerning the savages, yet there are certain traits in their general character that are observable in a partial acquaintance with a variety of tribes and nations, and upon these the following remarks are grounded:

They are, almost without exception, addicted to habits of extreme indolence; self-preservation, self-defence, and recreation being their usual incentives to action. The laborious occupations of the men consist almost exclusively in hunting, warfare, and tending their horses. Their amusements are principally horse racing, gambling, and sports of various kinds. The cultivation of corn and other vegetables, the gathering of fuel, cooking, and all other kinds of domestic drudgery is the business of the women, the men deeming it degrading to their dignity to be occupied in
No. 23 employment of this kind. Their religion consists in the observance of a variety of rites and ceremonies, which they practise

with much zeal and ardour. Their devotional exercises consist in sin
ing, dancing, and the performance of various mystical ceremonies, whi
they believe efficacious in healing the sick, frustrating the designs
their enemies, and in giving success to any enterprise in which they m
be embarked.

Amongst all these tribes and nations secret associations or councils a
common, the proceedings of which are held sacred and not to be divulg
except when the interests of the people are thought to require a disclosu
To these councils, which they denominate medicine, or rather mag
feasts, none are admitted but the principal men of the nation, or such
have signalized themselves by their exploits in battle, huntin
761 stealing horses, or in any of the pursuits accounted laudable
the Indians. In these assemblies the policy of making war
peace, and the manner in which it is to be effected, also all matters invol
ing the interests of the nation are first discussed.

Having thus been the subject of deliberation in solemn council (
the proceedings at these feasts are conducted with the greatest solemnit
the decision, of whatever nature it may be, is published to the people
large by certain members of the council performing the office of crie
On such occasions the criers not only proclaim the measures that ha
been recommended, but explain the reasons for them, and urge the peo
zealously to embrace them. It is also the business of the criers, who a
generally men of known valour and approved habits, and are able to enfo
their precepts by the examples they have set, to harangue the people of t
village daily and exhort them to such a course of life as is deemed prai
worthy. On such occasions, which are usually selected in the stillness
the morning or evening, the crier marches thro' the village uttering
exhortation in a loud voice and endeavouring to inculcate correct pri
ciples and sentiments. The young men and children of the village
directed how to demean themselves in order to become useful and enj
the esteem of good men and the favour of the good spirit. In this w
they are incited to wage war or sue for peace and to practise accordi
to their ideas of morality and virtue, and may be swayed to almost a
purpose that their elders (for such are their men of medicine, or as t
term imports, magic wisdom) think proper to execute. They appear
have no laws except such as grow out of habitual usages, or such as
sanctioned by common consent. The executive of their government see
to be vested in the chiefs and warriors, while the judiciary is composed
the medicine council above-mentioned, which, by the bye, takes no c
nizance of criminal acts, at which the principal chief presides. In
their acts of devotion as also on all occasions where their c
762 fidence is to be won or their friendship to be plighted, the smoki
of tobacco seems to be invariably regarded as an inviolable tok
of sincerity. They believe in the existence of a supreme being, wh
they denominate "master of life" or "good spirit," but of his attribu
their ideas are vague and confused. They are generally in the habit
offering in sacrifice a portion of the game first taken on a hunting expe
tion, a part of the first products of the field, and often a small porti
of the food provided for their refreshment. In smoking they genera
direct the first puff upward and the second downward to the earth, or t
first to the rising and the second to the setting sun, after which th

inhale the smoke into their lungs and puff it out thro' the nostrils for their own refreshment. They have some indistinct notion of the immortality of the soul, but appear to know no distinction of heaven or hell, Elysium or Tartar as the abodes of departed spirits.

The arts of civilized life, instead of exciting their emulation, are generally viewed by the Indians as objects unworthy of their attention. This results as a natural consequence from their habits of indolence. They are aware that much labour is requisite in the prosecution of them, and being inured from their infancy to look upon manual labour of every description as a drudgery that pertains exclusively to the female part of their community, they think it degrading to the character of men to be employed in them. Hunting, horsemanship, and warfare are the only avocations in which their ambition or sense of honour prompts them to engage.

Their reluctance to forgive an injury is proverbial. "Injuries are revenged by the injured, and blood for blood is always demanded if the deceased has friends who dare to retaliate upon the destroyer." Instances have occur'ed where their revenge has become hereditary, and quarrels have been settled long after the parties immediately concerned have become extinct.

Much has been published in relation to the high antiquity of Indian traditions, of those particularly which relate to their origin and their religion, but from the examples afforded by the several nations of
763 Indians resident upon the Mississippi and its waters, but little proof is to be had in favour of the position. It is not doubted that the immediate objects of their worship have been held in reverence by their predecessors for a long succession of ages, but in respect to any miraculous dispensations of Providence of which they may have a traditional knowledge, their ideas are at best exceedingly vague and confused, and of occurrences recorded in sacred history they appear to be entirely ignorant. The knowledge they have of their ancestry is also very limited, so much so that they can seldom trace back their pedigree more than a few generations, and then know so little of the place whence their fathers came that they can only express their ideas upon the
No. 24 subject in general terms, stating that they came "from beyond the lakes," from the rising or sitting sun, from the North or South, &c. In some instances, where their term of residence in a place has evidently been of limited duration, they have either lost or conceal their knowledge of the country whence their ancestors came, and assert that the Master of Life created and planted their fathers on the spot where they, their posterity, now live. They have no division of time except by years, seasons, moons, and days.

Particular periods are distinguished by the growth and changes of vegitables, the migrations, incubations, &c., of birds and other animals.

Their language is of two kinds, viz, verbal and signal, or the language of signs. The former presents a few varieties, marked by radical differences, and a multiplicity of dialects peculiar to individual tribes or nations descended from the same original. The latter is a language common to most if not all of the Western Indians, the motions or signs used to express ideas being, with some slight variations, the same amongst all of them. Nearly allied to the language of signs is a species of written language which

which they make use of, consisting of a few symbolical represent
and of course very limited and defective. The figures they make
have but a faint resemblance to the objects described, and are
imprinted upon trees, cliffs, &c., by means of paints, cha
764 and sometimes by carving with a knife or other edged to
are significant of some movement, achievement, or design
Indians.

A variety of figures of this description are to be seen upon the
rocks, and trees in places held sacred, and frequently resorted to
Indians, but of their import little is known. Many of these symb
made by the magicians or men of medicine, and are probably of
or devotional import.

Much intrigue, cunning, and artifice, are blended with the po
the Indians, and judging from their usual practice, it is a favour
well-approved maxim with them that "the end sanctifies the m
In an interview with strangers, it appears to be their first ob
ascertain their motives and the objects of their visit; and after reg
them for some time without a show of curiosity a variety of int
tories are proposed, in order to satisfy themselves upon these
This they appear to do with the view also of scrutinizing into th
acter and disposition of their guests. In the course of the conve
they become more and more familiar and impertinent, till at lengt
familiarity is succeeded by contempt and insult. Thus from the
reserve, they are, in a short time impelled by curiosity and a pro
to abuse where they are not in some measure compelled to respect
commission of outrages, even without the slightest provocation.
kind of treatment, however, is easily obviated at the commencem
an interview by resisting every advance made by the Indians t
famil'arity, & by uniformly opposing firmness and reserve to th
ties they are disposed to take.

These attributes of the Indian character manifest themselves n
in the well-known stratagems they adopt in warfare, but in the m
ment of their domestic concerns in which rivalships of one
another are created; parties are formed, and pretenders arise c
privileges that have been withheld from them, and placing thems
the head of factions, occasionally withdraw from the mothe
765 Thus new tribes are formed and distributed in various di
over the country, with nothing to mark their genealogy
resemblance of their language to that of the present stock, or
Indians that spring from the same origin.

The chiefs or governors of tribes have their rank and titles by
tance; yet in order to maintain them, and secure themselves
preeminence, they are under the necessity of winning over to thei
ests the principal warriors and most influential men of their tribe
countenance and support are often essential to their continu
authority. In conciliating the friendship of these, the chief i
compelled to admit them to participate in the authority with w
is invested, and to bestow upon them any effects of which he
possessed. Thus it often happens that the chiefs are among the
of the Indians, having parted with their horses, clothes, trinkets,
insure the farther patronage of their adherents, or to purchase the
ship of those that are disaffected.

"The situation of principal chief is very frequently usurped during the minority of the rightful successor, or wrested from an imbecile incumbent by some ambitious chief or warrior. In this case the ascendency obtained over the nation by the usurper is gradual, and depends upon the resources of his own mind, aided by his reputation for generosity and valour."

The condition of the savages is a state of constant alarm and apprehension. Their security from their enemies and their means of subsistence are precarious and uncertain, the former requiring the utmost vigilance to prevent its infraction, and the latter being attended with no regular supplies of the necessaries of life. In times of the most profound peace, whether at their villages or on a hunting expedition, they
No. 25 are continually on the alert lest they should be surprised by their enemies. By day scouts are constantly kept patrol'ing for a considerable distance around them, and by night centinels are posted to give notice of the approach of strangers.

When they engage in a hunt, they generally abandon their villages, old men, women, and children joining in the enterprize thro'
766 fear of being left at home without the strength of their nation to protect them. On their march they endeavour to make as great a display of force as practicable in order to intimidate any of their enemies that may be lurking to spy out their condition. With this view, they are careful to pitch their lodges or tents at the places of their encampment in such a manner and in such numbers as to give the impression at a distance that they are numerous and formidable. We have witnessed a hunting party on their march, co'sisting of not more than one hundred persons, including men, women, and children, yet at their encampment more than thirty lodges were pitched, each of which would accommodate at least twelve adult persons.

It is an opinion generally credited that the Indians are possessed of strong natural appetites for ardent spirits, but there is at least room to doubt of its being well founded. That their appetites for them are often strong and ungovernable is very certain, but they may be considered as fictitious rather than natural, having been created by occasional indulgencies in the use of intoxicating liquors. Instances are not rare in which Indians have refused to accept liquor when offered them. After a long abstinence from food, anything calculated to allay the cravings of the appetite is eagerly swallowed, and on such occasions nothing perhaps produces such an effect more speedily than spirit'ous liquor. Indians while lounging about a trading establishment are often destitute of food for a considerable time and can obtain no other kind of refreshment from the trader but liquor, which is bestowed partly in exchange for commodities they may have to *to* dispose of and partly by way of encouraging them to return to him with the products of their next hunt. A small draught on such occasions produces intoxication, and the sudden transition from a state of gnawing hunger to that of unconcerned inebriety cannot fail to make them passionately fond of a beverage that can thus change their condition so much to their immediate satisfaction. In their use of ardent spirits the Indians appear to be less captivated with their taste
767 than with the exhilirating effects. The quality of liquor is not a subject of discrimination with them. Provided it has sufficient

strength to inebriate, they are satisfied, let its character in other respects be what it may. Having contracted the habit of intoxication they seldom appear thankful for liquor unless it has been bestowed in such quantities as are sufficient to produce that effect.

In the indulgence of their appetites they display but few or no traits of epicurism, choosing those kinds of food that are most nutritive, without regarding their tastes or flavour. In the preservation of their food no pains are taken to render it savoury or palatable; their object is solely to reduce it to a state of security against putrefaction. They make no use of spices or other aromatics either in preserving or cooking their food. Even salt is not considered as an essential, and is seldom used as an appendage in their cookery. This article is only prized by them on account of its usefulness for their horses. In regard to their choice of food, however, and manner of cooking it, the small variety within their reach, and the impracti'bility of obtaining condiments of different kinds, perhaps renders them less particular in these respects than they would be under different circumstances. It cannot be supposed that they are entirely insensible to dainties of every description; on the contrary, they appear remarkably fond of sugar and saccharine fruits.

They appear to have a natural propensity for the fumes of tobacco, which they invariably inhale into the lungs and eject thro' the nostrils. They make no use of this article except in smoking, which is an indulgence of which they are exceedingly reluctant to be deprived. When they cannot obtain tobacco they use as a substitute the dried leaves of the sumac, the inner bark of the red willow dried, and the leaves and bark of a few other shrubs, the fumes of which are less stimulating but equally as palatable as those of tobacco.

The Indians under consideration know not the use or value of
768 the precious metals except as trinkets or ornaments for their dress. They use wampum, and, in some few instances, shells of a small size and of a particular character as a substitute for money. But, in general, furs, peltries, horses, and various articles of dress at standing or fixed rates of barter are the immediate objects both of internal and external trade.

They do not hold their property in common, but each individual enjoys the fruit of his own toil and industry. They are accounted more or less wealthy according to the number of horses they are possessed of and the style in which they are able to dress.

Polygamy is common amongst them, every man being allowed as many wives as he can maintain. Marriages are binding upon the parties only as long as they think proper to live together, and are often contracted for a limited term particularly specified. Females during the period of their catamenea, are excluded from society and compelled even to sleep apart from their families in small tents or lodges constructed for their use.

Dancing is common amongst them, both as a devotional exercise and an amusement. Their gestures on both occasions are similar, except that on the former they are accompanied by solemnity and on the latter by cheerfulness, and are characterized by extraordinary uncouthness
No. 26 rather than by gracefulness. No ribbaldry, however, or tricks of buffoon'ry are practised on these occasions; on the contrary, their deportment is uniformly accordant with their ideas of decorum.

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This exercise is invariably accompanied by singing or a kind of chanting, in which the women, who are excluded from a participation in the former, perform their part. Their music consists in a succession of tones of equal intervals, accompanied by occasional elevations and depressions of the voice. The modulations with which it is variegated are by no means melodious; the voices of all the chanters move in unison and all appear to utter the same aspirations. The same series of sounds appears to be common to the chanting of all the tribes.

769 The foregoing are among the most common features in the general character of the western Indians. Altho' in a region so extensive as that inhabited by them, and amongst so great a variety of tribes and nations, a considerable diversity of character is to be expected and admitted, yet it is believed that the traits above considered are common to the whole as a race of barbarians. And, altho' the shades of barbarianism in which they are enveloped uniformly exclude the light of civilization, yet it is not to be presumed that they are equally dark and malignant in all cases.

OF THE MISSISSIPPI, MISSOURI, AND OHIO RIVERS.

I trust it will not be deemed improper on this occasion to offer a few remarks upon the characters of these rivers, embracing more particularly the condition of their navigation.

The causes heretofore alleged as giving occasion to a diversity of soil within the valleys of the western rivers have an effect also in giving character to their channels or beds. For example, the banks near the mouths of the rivers being composed of a fine unctious and adhesive alluvion, one less liable to crumble and wash away and constitute a more permanent barrier to resist the force of the current than those higher up that are composed of coarser materials, in consequence the beds of the rivers are rendered narrower and deeper towards their mouths than at greater distances from them. This is more particularly the case with the Mississippi, Red, Arkansaw, and some others whose beds or channels gradually dilate and become more shoal on ascending from their mouths. Thus it happens, also, that the navigation of the Mississippi has fewer obstructions between Natchez and its mouth than above, this part of the river having so great a depth of water that snags, bars, &c., are sunk below the reach of any kind of water craft employed in its navigation. From Natchez upward to its confluence with the Missouri the river presents impediments that become more and more numerous and difficult to pass. Still, however, the main channel, tho' intricate in many

770 places, affords a sufficient *of* depth of water in all stages for boats of five or six feet draft to ascend to the mouth of the Ohio. From this point to the Missouri, a distance of more than two hundred and twenty miles, the navigation is partially obstructed during a very low stage of the water by shoals, so that it is navigable only for boats of modern burthen requiring but about three feet of water. At the distance of about thirty miles above the mouth of the Ohio there are two rocky bars extending across the Mississippi, called the Big and Little Chains, which in the deepest channel across them afford no more than five or six feet of water in a low stage, and occasion a great rapidity of current.

The Mississippi is usually at its lowest stage about the middle of August, the summer freshet of the Missouri having subsided previously to that time. It usually continues in this stage till it is swollen by the fall freshet of the Ohio, after which it subsides again and remains low during the winter. The distance from N. Orleans to the mouth of the Missouri is estimated at about twelve hundred miles, and its average descent per mile thro'out that distance at twelve inches, making an aggregate descent of 1,200 feet between these two points, or giving at the mouth of the Missouri an elevation of 1,200 feet above tide water.

Its current in the main channel of the river is supposed to have an average velocity of 3¾ miles per hour in a moderate stage of water, but when the river is high its velocity is considerably accelerated. Its water is turbid, being charged with a fine argillaceous mud of a light colour, derived exclusively from the Missouri.

The Missouri is a very wild and turbulent river, possessing the ruder features of the Mississippi, but destitute of the gentleness characteristic of the latter in many places. The obstructions to the navigation of the Missouri, altho' they are of the same character with those of the Mississippi, are far more numerous and formidable than those of the latter. The channel is rendered exceedingly intricate by means of sand bars and islands, and the navigation in many places is very hazardous on
771 account of the multiplicity of rafts, snags, sand bars, &c., with which the channel is beset. No part of the river is exempt from these obstructions for any considerable distance, particularly where the water is low.

As this river in connexion with some of its principal tributaries traverses a considerable variety of climates, embracing more than 10 degrees of latitude, a succession of spring freshets invariably takes place and maintains an elevated stage of water from the breaking up of winter early in March to the middle and sometimes the last of July, when the summer freshet yielded by the most northerly of its tributaries comes down. During this period there is a sufficient depth of water to admit
No. 27 boats of almost any burthen, but during the residue of the year it can hardly be called navigable, except for boats drawing no more than 25 or 30 inches. The river is usually blocked up with ice during the winter season. The average velocity of its current in a middling stage of water may be estimated at 4½ miles. In times of high freshet it moves with an accelerated velocity equal to 5 or 5½ miles per hour. Its descent per mile is found by careful measurement to be sixteen inches, making the whole descent from the mouth of the river to that of the Platte, a distance of about six hundred and fifty miles, 866 feet, which added to 1,200, feet the descent of the Mississippi, gives an elevation of 2,066 feet above tide water. The object of this calculation is to arrive at the probable height of James Peak above the level of the ocean. The distance along the Platte to the base of the Rocky Mountains is estimated at 700 miles, and its average descent per mile twenty inches, making its whole descent 1,166 feet, which, added to 2,066 feet, the elevation at the mouth of the Platte, gives an altitude of 3,232 feet for that of the base of the mountains above tide water.

If instead of the route above specified from the ocean to the base of the mountains we substitute the distance on the Mississippi from tide water

to the mouth of the Arkansaw, 600 miles, and thence by the
772 meanders of the latter to the base of the Rocky Mountains, 1,980
miles, and allow as before an average descent of twelve inches to
he mile in the former and sixteen inches (which is probably very near
he truth) to the latter, the result will give an elevation of 3,240 feet
bove tide water, differing only eight feet from the estimated elevation
y the route above proposed. To this if we add the altitude of James
Peak, viz, 8,500 feet, as before stated, we have an aggregate elevation of
11,740 feet as the height of the peak above the level of the ocean. Com-
paring this altitude with that of the "inferiour limit of perpetual snow,"
as estimated by M. De Humboldt for the latitude of 40 degrees, viz,
9,846 feet above the ocean, we find the summit of the peak 1,894 feet
higher than that elevation. And judging from appearances this difference
of altitude seemed sufficiently well marked by the distance to which the
snow extended from the summit downward upon the sides of the peak to
authenticate in a good degree the calculation above stated.

But to return from the digression: The Ohio is next to be considered.
This river, as before hinted, differs from those just described, in the
rapidity of its current, the width of its bed, character of its channel, and
in several other respects. But as its general character is well known, a
few remarks in relation to it will here suffice. The obstructions to its
navigation are sand bars, some few rafts, snags, and rapids, to which the
intricacy of its channel in several places may be added. During a middle
and high stage of water these obstructions entirely disappear, and an
accelerated current is the only difficulty to be encountered. The aver-
age velocity of the current in a moderate stage of water may be estimated
at 2½ miles and in a high stage at 3 miles per hour. The season in
which the navigation of the Ohio can be relied on commences between
the middle of February and first of March and continues to the latter
part of June. A fall freshet usually takes place in October or Novem-
ber, and the river is again navigable for a few weeks. During the rest
of the year boats of inconsiderable burden meet with numerous obstructions
in their progress from the lowness of the water, and in many
773 places no channel can be found of sufficient depth to admit their
passage. At the distance of about 17 miles from its mouth is the
first serious obstruction to its navigation, consisting of a limestone bar
extending across the river, denominated the Big Chain. Three miles
above it is another bar of a similar description. The range of rocks of
which these appear to be a portion seems to extend across the point of
land situated between the Ohio and Mississippi, presenting itself again
on the latter at the Big and Little Chains, before mentioned. The falls
of the Ohio at Louisville are impassable for boats of burthen, except in
the higher stages of the water. Le Tarts Falls and numerous other
rapids denominated ripples are also impassable for boats of any consider-
able burthen when the river is at its lowest stages. In this state the
river is fordable in numberless places.

The foregoing report is intended as a civil rather than a military
description of the country. For a partial description of its military fea-
tures I beg leave to refer to my report of the 12th of May, 1818, to
Brig'r Gen. T. A. Smith, on file in the War Department.

In the performance of topographical duties I have been aided by Lts.
Graham and Swift, who have rendered essential service in these and

other operations. The former of these gentlemen is at present occupied in completing the calculations upon the various astronomical and other observations we took in connexion with our duties. The latter is engaged in delineating the surveys made in behalf of the expedition.

The services of Capt'n Bell are to be recognized as highly important and useful to the expedition, in keeping a journal of our proceedings, and conducting detached parties whenever an occasion required. He is now busily engaged in revising his journal, a copy of which will soon be in readiness to be disposed of agreeably to your instructions.

The duties in the various departments of natural science were discharged with zeal and ability by Mr. Say & Dr. James, assisted by Mr. Peale, who was active and industrious in the collection and preservation of such rare specimens of animals, &c., as came under our
774 observation. The vessel on board of which most of these specimens were shipped from N. Orleans has very lately arrived in in this port, and discharged our packages in good order.

I take this opportunity to express my acknowledgement of
No. 28 the politeness of her owners, Messrs. C. Price & Morgan, who have kindly franked the transportation of the collections.

A catalogue, embracing the zoology of the country explored by us, is shortly expected from Mr. Say, and shall be forwarded by the earliest opportunity. Dr. James has been instructed also to furnish a mineralogical and botanical catalogue, which is daily expected. Both of them are intended as accompaniments to this report.

Mr. Seymour has taken numerous lands*kip* views exhibiting the characteristic features of various parts of the country, besides many others of detached scenery.

Suggestions have been made by gentlemen of the Philosophical Society in regard to publishing our scientific discoveries with the philosophical transactions. The subject is to be brought before the society, and as soon as any definite proposals shall have been made I will apprise you thereof without delay.

A map of the country, situated between the meridian of Washington City and the Rocky Mountains, shall be reported as soon as the necessary elements and data can be compiled and the drawings executed.

I have the honor to be, sir, most respectfully, your obedt. and humble servant,

S. H. LONG, *Maj., T. Eng.*

Hon. J. C. CALHOUN,
Sec'y of War.

775 In the Court of Claims of the United States.

THE CHOCTAW NATION AND THE CHICKASAW Nation
vs.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians. } No. 18932.

Deposition of witness produced, sworn, and examined at the hour of ten o'clock a. m., on the 28th day of October, A. D. 1897, at the city of Washington, District of Columbia, before me, the undersigned, a notary

public, in a certain cause now pending in the Court of Claims, wherein the Choctaw Nation and the Chickasaw Nation are claimants and the United States and the Wichita and the affiliated bands of Indians are defendants; when were present Mr. Jeremiah M. Wilson, on behalf of the claimant, the Choctaw Nation, and Mr. Charles C. Binney, on behalf of the defendant, the United States; counsel for the Chickasaw Nation and for the Wichita and affiliated bands having been duly notified.

LEVIN C. HANDY, having been produced as a witness on behalf of the defendant, the United States, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, relative to the said cause.

Thereupon witness says that his name is Levin C. Handy; that his occupation is that of photographer; that he is 42 years of age; that his place of residence is Washington, D. C.; that he has no interest, direct or indirect, in the claim which is subject to inquiry in said cause;
776 that he is not related to the claimant.

And thereupon the said Levin C. Handy was examined by the counsel for the United States, and, in answer to interrogatories, testified as follows:

Q. 1. Are you the same Levin C. Handy who testified in the case of United States against Texas in the Supreme Court of the United States, and whose deposition is printed on pages 253 to 256 of the record in that case?

A. Yes, sir.

Q. 2. Are these photographs, which have been put in evidence in this case under stipulation, numbered one to nine, among the photographs which you testified in that case that you made?

A. They are, sir.

Q. 3. Can you identify here the photographs from which you made them?

A. Yes, I can. Identifying No. 1 as made from photograph of Carte Generale du Royaume de la Nouvelle Espagne.

Identifying No. 2 as made from photograph marked "Plate 1, reduced and laid down to the schedule of forty miles to the inch by Anthony Nau."

Identifying No. 3 as made from a photograph marked Plate 2, "A chart of the internal part of Louisiana."

Identifying No. 4 as made from a photograph marked "A map of the internal provinces of New Spain."

Indentifying No. 5 as made from a photograph marked "Extract of map of the United States, including Louisiana, by William Darby."

Identifying No. 6 as made from a portion of photograph marked "Map of the United States, with the contiguous British and Spanish
777 possessions, by John Melish, improved to the 1st of January, 1818."

Identifying No. 7 as made from a portion of a photograph marked "Mapa de los Estados Unidos de Mejico, 1847."

Identifying No. 8 as made from photograph marked "J. de Cordova's map of the State of Texas, 1849."

Identifying No. 9 as made from photograph marked "Map of the country upon Upper Red River, explored in 1852 by Captain R. B. Marcy, 5th United States Infantry."

(Counsel for the United States offers in evidence the above photographs, identified as those from which the photographs already in evidence were made, to be marked "United States Exhibits 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, and 9A.")

Q. 4. Did you make that photograph [showing witness photograph]?

A. I did.

Q. 5. Where did you make it?

A. In the library of the State Department.

Q. 6. From what did you make it?

A. I made it from a treaty, the writing of which is well defined on the picture.

(Counsel for the United States offers this photograph in evidence, to be marked "Exhibit 10.")

Q. 7. Did you make this photograph [showing witness photograph]?

A. I did, sir.

Q. 8. Where did you make it?

A. I made that in the Library of Congress at the Capitol.

Q. 9. From what did you make it?

778 A. I made a memorandum at the time I made the picture and I have it here. I made it from the atlas to Thompson's Alcedo, by Aaron Arrowsmith, published in London in 1816.

(Counsel for the United States offers this photograph in evidence, to be marked "Exhibit No. 11.")

Q. 10. Did you make this photograph?

A. I did.

Q. 11. Where did you make it?

A. I made that in the new Congressional Library.

Q. 12. From what did you make it?

A. I made it from the map of Spanish dominions in North America, found in "A Modern Atlas" by John Pinkerton, published in Philadelphia in 1818.

(Counsel for the United States offers this photograph in evidence to be marked "Exhibit No. 12.")

(Counsel for the United States offers in evidence, to be marked "Exhibit No. 13," the printed copy of the agreement between the United States commissioners to negotiate with the Five Civilized Tribes and the commissioners on the part of the Choctaw and Chickasaw Indians, bearing date, Atoka, Indian Territory, April 23d, 1897, counsel for the Choctaw Nation agreeing that it is a correct copy.)

Cross-examination by Judge Wilson waived.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do to state it, says: I do not.

LEVIN C. HANDY.

779 I, F. Walter Brandenburg, jr., a notary public in and for the District of Columbia, certify that at the time and place aforesaid,

in C. Handy, witness on behalf of the United States in the above-
tled cause, was by me sworn, before any question was put to him, to
the truth, the whole truth, and nothing but the truth relative to said
se, and that the answers were taken down in my presence and the
l deposition as above set forth was read over to and signed by him,
ore me, at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this
d day of November, A. D. 1897.

[SEAL.] F. WALTER BRANDENBURG, Jr.,
Notary Public, D. C.

0 UNITED STATES EXHIBIT No. 13—F. W. B., comr. No. 18932.

Agreement between the United States commissioners to negotiate with the Five Civilized Tribes and the commissioners on the part of the Choctaw and Chickasaw Indians.

81 Agreement between the United States commissioners to negotiate with the Five Civilized Tribes and the commissioners on the part of the Choctaw and Chickasaw Indians.

This agreement, by and between the Government of the United States, f the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Frank C. Armstrong, Archi-ald S. McKennon, Thomas B. Cabaniss, and Alexander B. Montgomery, duly appointed and authorized thereunto, and the governments of the Choctaw and Chickasaw tribes or nations of Indians in the Indian Terri-tory, respectively, of the second part, entered into in behalf of such Choc-taw and Chickasaw governments, duly appointed and authorized there-unto, viz, Green McCurtain, J. S. Standley, N. B. Ainsworth, Ben Hampton, Wesley Anderson, Amos Henry, D. C. Garland, and A. S. Williams, in behalf of the Choctaw tribe or nation, and R. M. Harris, I. O. Lewis, Holmes Colbert, P. S. Mosely, M. V. Cheadle, R. L. Murray, William Perry, A. H. Colbert, and R. L. Boyd, in behalf of the Chick-asaw tribe or nation,

Witnesseth, that in consideration of the mutual undertakings herein contained, it is agreed as follows:

That all the lands within the Indian Territory belonging to the Choc-taw and Chickasaw Indians shall be allotted to the members of said tribes so as to give to each member of these tribes (except the Choctaw freedmen), so far as possible, a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

That all the lands set apart for town sites, and the strip of land lying between the city of Fort Smith, Arkansas, and the Arkansas and Poteau rivers, extending up said river to the mouth of Mill Creek; and six hun-dred and forty acres each to include the buildings now occupied for the Jones Academy, Tushkahoma Female Seminary, Wheelock Orphan Sem-inary, and Armstrong Orphan Academy; and ten acres for the capitol building in the Choctaw Nation; one hundred and sixty acres each imme-diately contiguous to and including the building know as Bloomfield

Academy, Lebannon Orphan Home, Harley Institute, Rock Academy, and Collins Institute; and five acres for the capitol building in the Chickasaw Nation; and the use of one acre of land for each church house now erected outside of the towns; and eighty acres of land each for J. S. Murrow, H. R. Schermerhorn, and the widow of R. S. Bell, who have been laboring as missionaries in the Choctaw and Chickasaw nations since the year 1866, with the same conditions and limitations as apply to lands allotted to the members of the Choctaw and Chickasaw nations, and to be located on lands not occupied by a Choctaw or a Chickasaw; and a reasonable amount of land, to be determined by the townsite commission, to include all court-houses and jails, and other public buildings not hereinbefore provided for, shall be exempted from division. And all
782 coal and asphalt in or under the lands allotted and reserved from allotment, shall be reserved for the sole use of the members of the Choctaw and Chickasaw tribes, exclusive of freemen: Provided, That where any coal or asphalt is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee, or owner of the land, by the lessee, or party operating the same, before operations begin.

That in order to such equal division, the lands of the Choctaws and Chickasaws shall be graded and appraised so as to give to each member, so far as possible, an equal value of the land: Provided, That the lands allotted to the Choctaw freedmen are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw tribe, so as to reduce the allotments to the Choctaws by the value of the same and not affect the value of the allotments to the Chickasaws.

That the said Choctaw freedmen who may be entitled to allotments of forty acres each shall be entitled each to land equal in value to forty acres of the average land of the two nations.

That in the appraisement of the lands to be allotted the Choctaw and Chickasaw tribes shall each have a representative, to be appointed by their respective executives, to cooperate with the Commission to the Five Civilized Tribes, or any one making appraisements under the direction of the Secretary of the Interior, in grading and appraising the lands preparatory to allotment. And the land shall be valued in the appraisement as if in its original condition, excluding the improvements thereon.

That the appraisement and allotment shall be made under the direction of the Secretary of the Interior, and shall begin as soon as the progress of the surveys now being made by the United States Government will admit.

That each member of the Choctaw and Chickasaw tribes, including Choctaw freedmen, shall, where it is possible, have the right to take his allotment on land the improvements on which belong to him, and such improvements shall not be estimated in the value of his allotment. In the case of minor children, allotments shall be selected for them by their father, mother, guardian, or the administrator having charge of their estate, preference being given in the order named, and shall not be sold during his minority. Allotments shall be selected for prisoners, convicts, and incompetents by some suitable person akin to them, and due care taken that all persons entitled thereto have allotments made to them.

All the lands allotted shall be nontaxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent; and each allottee shall select from his allotment a homestead of one hundred and sixty acres, for which he shall have a separate patent, and which shall be inalienable for twenty-one years from date of patent. This provision shall also apply to the Choctaw freedmen to the extent of his allotment. Selections for homesteads for minors to be made as provided herein in case of allotments, and the remainder of the lands allotted to said members shall be alienable for a price to be actually paid, and to include no former indebtedness or obligation—one-fourth of said remainder in one year, one-fourth in three years, and the balance of said alienable lands in five years from date of the patent.

That all contracts looking to the sale or incumbrance in any way of the land of an allottee, except the sales hereinbefore provided, shall be
783 null and void. No allottee shall lease his allotment, or any portion thereof, for a longer period than five years, and then without the privilege of renewal. Every lease which is not evidenced by a writing, setting out specifically the terms thereof, or which is not recorded in the clerk's office of the United States court for the district in which the land is located, within three months after the date of its execution, shall be void, and the purchaser or lessee seall acquire no rights whatever by an entry or holding thereunder. And no such lease nor any sale shall be valid as against the allottee unless providing to him a reasonable compensation for the lands sold or leased.

That all controversies arising between the members of said tribes as to their right to have certain lands allotted to them shall be settled by the commission making the allotments.

That the United States shall put each allottee in possession of his allotment and remove all persons therefrom objectionable to the allottee.

That the United States shall survey and definitely mark and locate the ninety-eighth (98th) meridian of west longitude between Red and Canadian rivers before allotment of the lands herein provided for shall begin.

That as soon as practicable after the completion of said allotments, the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall jointly execute, under their hands and the seals of their respective nations, and deliver to each of said allottees patents conveying to him all the right, title, and interest of the Choctaws and Chickasaws in and to the land which shall have been allotted to him in conformity with the requirements of this agreement, excepting all coal and asphalt in or under said land. Said patents shall be framed in accordance with the provisions of this agreement, and shall embrace the land allotted to such patentee, and no other land. The Secretary of the Interior of the United States shall annex to such patents his official certificate that it is drawn in accordance with the provisions of this agreement; that it embraces the land allotted to such patentee, and no other land, and that he approves said patent; and said certificate shall be operative as a relinquishment of all right, title, and interest of the United States in and to the land conveyed by said patents, and as a guaranty of the United States of title to and possession of the land so conveyed, and the acceptance of his patents by such allottee shall be operative as an assent on his

part to the allotment and conveyance of all the lands of the Choctaws and Chickasaws in accordance with the provisions of this agreement, and as a relinquishment of all his right, title, and interest in and to any and all parts thereof, except the land embraced in said patents, except also his interest in the proceeds of all lands, coal and asphalt herein excepted from allotment.

That the United States shall provide by law for proper records of land titles in the territory occupied by the Choctaw and Chickasaw tribes.

The rights of way for railroads through the Choctaw and Chickasaw nations to be surveyed and set apart and platted to conform to the respective acts of Congress granting the same in cases where said rights of way are defined by such acts of Congress. but in cases where the acts of Congress do not define the same, then Congress is memorialized to definitely fix the widths of said rights of way for station grounds and between stations, so that railroads now constructed through said nations shall have, as near as possible, uniform rights of way; and Con-
784 gress is also requested to fix uniform rates of fare and freight for all railroads through the Choctaw and Chickasaw nations; branch railroads now constructed and not built according to acts of Congress to pay the same rates for rights of way and station grounds as main lines.

It is further agreed that there shall be appointed a commission for each of the two nations. Each commission shall consist of one member to be appointed by the executive of the tribe for which said commission is to act, who shall not be interested in town property other than his home, and one member of the Commission to the Five Civilized Tribes to be designated by the chairman thereof. Each of said commissions shall lay out town sites, to be restricted as far as possible to their present limits, where towns are now located in the nation for which said commission is appointed. Said commission shall have prepared correct and proper plats of each town, and file one in the clerk's office of the United States district court for the district in which the town is located, and one with the principal chief or governor of the nation in which the town is located, and one with the Secretary of the Interior, to be approved by him before the same shall take effect. When said towns are so laid out each lot on which permanent, substantial, and valuable improvements other than fences, tillage, and temporary houses, have been made, shall be valued by the commission provided for the nation in which the town is located, at the price a fee simple title to the same would bring in the market at the time the valuation is made, but not to include in such value the improvements thereon. The owner of improvements on each lot shall have the right to buy the same at sixty-two and one-half per cent of the said market value within sixty days from date of notice served on him that such lot is for sale, and if he purchases the same, he shall, within ten days from his purchase, pay into the Treasury of the United States one-fourth of the purchase price, and the balance in three equal annual instalments, and when the entire sum is paid shall be entitled to a patent for the same. In case the two members of the commission fail to agree as to the market value of any lot, they shall elect a third person, who is not interested in town lots, who shall act with them to determine said value.

If such owner of the improvements on any lot fails within sixty days to purchase and make the first payment on the same, such lot, with the

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improvements thereon, shall be sold at public auction to the highest bidder, under direction of the aforesaid commission, and the purchaser at such sale shall pay to the owner of the improvements the price for which said lot shall be sold, less sixty-two and one-half per cent of the said appraised value of the lot, and shall pay the sixty-two and one-half per cent of said appraised value into the United States Treasury, under regulations to be established by the Secretary of the Interior, in four installments as hereinbefore provided. The commission shall have the right to reject any bid on such lot which they consider below its value.

All lots not so appraised shall be sold from time to time at public auction (after proper advertisement) by the commission for the nation in which the town is located, as may seem for the best interest of the nations and the proper development of each town, the purchase price to be paid in four instalments as hereinbefore provided for improved lots. The commission shall have the right to reject any bid for such lots which they consider below its value.

All the payments herein provided for shall be made under the direction of the Secretary of the Interior into the United States Treasury.

A failure of sixty days to make any one payment to be a forfeiture
785 of all payments made and all rights under the contract: Provided,

That the purchaser of any lot shall have the option of paying the entire price of the lot before the same is due.

No tax shall be assessed by any town government against any town lot unsold by the commission, and no tax levied against a lot sold, as herein provided, shall constitute a lien on same till the purchase price thereof has been fully paid to the nation.

The money paid into the United States Treasury for the sale of all town lots shall be for the benefit of the members of the Choctaw and Chickasaw tribes (freedmen excepted); and at the end of one year from the ratification of this agreement, and at the end of each year thereafter, the funds so accumulated shall be divided and paid out to the Choctaws and Chickasaws (freedmen excepted), each member of the two tribes to receive an equal portion thereof.

That no law or ordinance shall be passed by any town which interferes with the enforcement of or is in conflict with the Choctaw or Chickasaw constitutions or laws, or those of the United States, and all persons in such towns shall be subject to said laws; and the United States agrees to maintain strict laws in the territory of the Choctaw and Chickasaw tribes against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality.

That said commission shall be authorized to locate, within a suitable distance from each town site, not to exceed five acres to be used as a cemetery; and when any town has paid into the United States Treasury, to be part of the fund arising from the sale of town lots, ten dollars per acre therefor, such town shall be entitled to a patent for the same as herein provided for titles to allottees, and shall dispose of same at reasonable prices in suitable lots for burial purposes, the proceeds derived from such sales to be applied by the town government to the proper improvement and care of said cemetery.

That no charge or claim shall be made against the Choctaw or Chickasaw tribes by the United States for the expenses of surveying and

platting the lands and town sites, or for grading, appraising, and all
ting the lands, or for appraising and disposing of the town lots as her
provided.

That the land adjacent to Fort Smith and lands for court-houses, ja
and other public purposes, excepted from allotment, shall be dispo
of in the same manner and for the same purposes as provided for to
lots herein, but not till the Choctaw and Chickasaw councils shall dir
such disposition to be made thereof; and said land adjacent thereto sh
be placed under the jurisdiction of the city of Fort Smith, Arkansas,
police purposes.

There shall be set apart and exempted from appraisement and sale,
the towns, lots upon which churches and parsonages are now built a
occupied, not to exceed fifty feet front and one hundred feet deep
each church or parsonage; provided, that such lots shall only be u
for churches and parsonages, and when they cease to be so used sh
revert to the members of the tribes to be disposed of as other town l
provided further, that these lots may be sold by the churches for wh
they are set apart if the purchase money therefor is invested in other
or lots in the same town, to be used for the same purpose and with
same conditions and limitations.

It is agreed that all the coal and asphalt within the limits of
Choctaw and Chickasaw nations shall remain and be the common pr
erty of the members of the Choctaw and Chickasaw tribes (freedm
excepted), so that each and every member shall have an equal
786 undivided interest in the whole; and no patent provided for
this agreement shall convey any title thereto. The revenues fr
coal and asphalt, or so much as shall be necessary, shall be used for
education of the children of Indian blood of the members of said tri
Such coal and asphalt mines as are now in operation, and all others wh
may hereafter be leased and operated, shall be under the supervision
control of two trustees, who shall be appointed by the President of
United States, one on the recommendation of the principal chief of
Choctaw Nation, who shall be a Choctaw by blood, whose term shall
for four years, and one on the recommendation of the governor of
Chickasaw Nation, who shall be a Chickasaw by blood, whose term s
be for two years, after which the term of appointees shall be four ye
They shall each give bond for the faithful performance of their du
under such rules as may be prescribed by the Secretary of the Inter
Their salaries shall be fixed and paid by their respective nations.

All coal and asphalt mines in the two nations, whether now develo
or to be hereafter developed, shall be operated, and the royalties th
from paid into the Treasury of the United States, and shall be dra
therefrom under such rules and regulations as shall be prescribed by
Secretary of the Interior.

All contracts made by the national agents of the Choctaw and Chi
asaw nations for operating coal and asphalt, with any person or corp
tion are hereby ratified and confirmed, and the lessee shall have the ri
to renew the same when they expire.

All agreements heretofore made by any person or corporation with
member or members of the Choctaw or Chickasaw Nation, the objec
which was to obtain such member or members' permission to operate

or asphalt, are hereby declared void, but such persons or corporations shall have prior right to lease the coal or asphalt claims described therein by application to the trustees within six months after the ratification of this agreement.

All leases under this agreement shall include nine hundred and sixty acres, which shall be in a square as nearly as possible, and shall be for thirty years. The royalty on coal shall be fifteen cents per ton of two thousand pounds on all coal mined, payable on the 25th day of the month next succeeding that in which it is mined. Royalty on asphalt shall be sixty cents per ton on . . . asphalt, payable same as coal; provided, that the legislatures of the Choctaw and Chickasaw nations may reduce such royalties when they deem it for their best interests to do so. No royalties shall be paid except into the United States Treasury, as herein provided.

Lessees shall pay on each coal or asphalt claim at the rate of one hundred dollars per annum, in advance, for the first and second years, two hundred dollars per annum, in advance, for the third and fourth years, and five hundred dollars for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advanced payments; and all persons having coal leases must pay said annual advanced payments on each claim whether developed or undeveloped; provided, however, that should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance thereon shall then become and be the money and property of the Choctaw and Chickasaw nations.

787 In surface, the use of which is reserved to present coal operators, shall be included such lots in towns as are occupied by lessees' houses—either occupied by said lessees' employees or as offices or warehouses: Provided, however, That in those town sites designated and laid out under the provision of this agreement, where coal leases are now being operated and coal is being mined, there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the town-site board of appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines, and a sufficient amount for all buildings and machinery for mining purposes: And provided further, That when the lessees shall cease to operate said mines, then and in that event the lots of land so reserved shall be disposed of by the coal trustees for the benefit of the Choctaw and Chickasaw tribes.

That whenever the members of the Choctaw and Chickasaw tribes shall be required to pay taxes for the support of schools, then the funds arising from such royalties shall be disposed of for the equal benefit of their members (freedmen excepted) in such manner as the tribes may direct.

It is further agreed that the United States courts now existing, or that may hereafter be created, in the Indian Territory, shall have exclusive

jurisdiction of all controversies growing out of the title, ownership, occupation, possession, or use of real estate, coal, and asphalt in the territory occupied by the Choctaw and Chickasaw tribes; and of all persons charged with homicide, embezzlement, bribery, and embracery, hereafter committed in the territory of said tribes, without reference to race or citizenship of the person or persons charged with such crime; and any citizen or officer of the Choctaw or Chickasaw nations charged with such crime shall be tried, and, if convicted, punished as though he were a citizen or officer of the United States.

And sections sixteen hundred and thirty-six to sixteen hundred and forty-four, inclusive, entitled "Embezzlement," and sections seventeen hundred and eleven to seventeen hundred and eighteen, inclusive, entitled "Bribery and embracery," of Mansfield's Digest of the Laws of Arkansas, are hereby extended over and put in force in the Choctaw and Chickasaw nations; and the word "officer," where the same appears in said laws, shall include all officers of the Choctaw and Chickasaw governments; and the fifteenth section of the act of Congress, entitled "An act to establish United States courts in the Indian Territory, and for other purposes, approved March 1, 1889, limiting jurors to citizens of the United States, shall be held not to apply to United States courts in the Indian Territory held within the limits of the Choctaw and Chickasaw nations; and all members of the Choctaw and Chickasaw tribes, otherwise qualified, shall be competent jurors in said courts: Provided, That whenever a member of the Choctaw or Chickasaw nation is indicted for homicide, he may, within thirty days after such indictment and his arrest thereon, and before the same is reached for trial, file with the clerk of the court in which he is indicted his affidavit that he can not get a fair trial in said court, and it thereupon shall be the duty of the judge of said court to order a change of venue in such case to the United States district court for the western district of Arkansas, at Fort Smith, Arkansas, or to the United States district court for the eastern district of Texas, at Paris, Texas, always selecting the court that, in his judgment, is nearest or most convenient to the place where the crime charged in the indictment is supposed to have been committed, which courts shall have
788 jurisdiction to try the case; and in all said civil suits said courts shall have full equity powers; and whenever it shall appear to said court, at any stage in the hearing of any case, that the tribe is in any way interested in the subject-matter in the controversy, it shall have power to summon in said tribe and make the same a party to the suit, and proceed therein in all respects as if such tribe were an original party thereto; but in no case shall suit be instituted against the tribal government without its consent.

It is further agreed that no act, ordinance, or resolution of the council of either the Choctaw or Chickasaw tribes, in any manner affecting the land of the tribe, or of the individuals after allotment, or the moneys or other property of the tribe or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), or the rights of any person to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States. When such acts, ordinances, or resolu-

tions passed by the council of either of said tribes shall be approved by the governor thereof, then it shall be the duty of the national secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances, or resolutions, when so approved, shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby, and when disapproved shall be returned to the tribe enacting the same.

It is further agreed, in view of the modifications of legislative authority and judicial jurisdiction herein provided, and the necessity of the continuance of the tribal governments so modified, in order to carry out the requirements of this agreement, that the same shall continue for a period of eight years from the fourth day of March, eighteen hundred and ninety-eight. This stipulation is made in the belief that the tribal governments, so modified, will prove so satisfactory that there will be no need or desire for further change till the lands now occupied by the Five Civilized Tribes shall, in the opinion of Congress, be prepared for admission as a State to the Union. But this provision shall not be construed to be in any respect an abdication by Congress of power at any time to make needful rules and regulations respecting said tribes.

That all per capita payments hereafter made to the members of the Choctaw or Chickasaw nations shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account for such disbursements to said Secretary.

It is further agreed that all claims of any kind which either the United States may have upon the Choctaw Nation or the Chickasaw Nation, or the Choctaw Nation or the Chickasaw Nation may have upon the United States, shall be submitted to the Senate of the United States as a board of arbitrators for final determination, and without any unnecessary delay to make the award and provision for the settlement of whatever sum shall be by them awarded, and the other provisions of this agreement shall not be operative or effective, but shall remain in abeyance until said claims have been finally determined and settled.

It is further agreed that all of the funds invested, in lieu of investment, treaty funds, or otherwise, now held by the United States in trust for the Choctaw and Chickasaw tribes, shall be capitalized within one year after the tribal governments shall cease, so far as the same
789 may legally be done, and be appropriated and paid, by some officer of the United States appointed for the purpose, to the Choctaws and Chickasaws (freedmen excepted) per capita, to aid and assist them in improving their homes and lands.

It is further agreed that the Choctaws and Chickasaws, when their tribal governments cease, shall become possessed of all the rights and privileges of citizens of the United States.

It is further agreed that the Choctaw orphan lands in the State of Mississippi, yet unsold, shall be taken by the United States at one dollar and twenty-five cents ($1.25) per acre, and the proceeds placed to the credit of the Choctaw orphan fund in the Treasury of the United States; the number of acres to be determined by the General Land Office.

This agreement shall be binding on the United States when ratified by Congress, and on each tribe or nation, party hereto, when ratified by the constituted authorities of that tribe or nation, according to their respective laws on the subject.

In witness whereof the said commissioners do hereunto affix their names at Atoka, Indian Territory, this the twenty-third day of April, eighteen hundred and ninety-seven.

GREEN MCCURTAIN,
Principal Chief.
J. S. STANDLEY,
W. B. AINSWORTH,
BEN HAMPTON,
WESLEY ANDERSON,
AMOS HENRY,
D. C. GARLAND,
Choctaw Commission.
R. M. HARRIS,
Governor.
ISAAC O. LEWIS,
HOLMES COLBERT,
ROBT. L. MURRAY,
WILLIAM PERRY,
R. L. BOYD,
Chickasaw Commission.
FRANK C. ARMSTRONG,
Acting Chairman.
ARCHIBALD S. MCKENNON,
THOMAS B. CABANISS,
ALEXANDER B. MONTGOMERY,
Commission to the Five Civilized Tribes.
H. M. JACOWAY, Jr.,
Sec'y, Five Tribes Commission.

790 (Indorsed:) In the Court of Claims. No. 18932. Choctaw Nation, etc., *v.* United States, etc. Deposition of Levin C. Handy for defendants, the United States. Filed Nov. 3, 1897. Court of Claims.

791 *Queries put to A. P. Chouteau by the Senate Committee on Indian Affairs relative to the character of the country destined for the Indians beyond the Mississippi and the actual condition of the Indians which have removed there.*

Question 1st. Have you a residence in St. Louis, Missouri, and a trading establishment on the Arkansas River?

Answer. My present residence is at St. Louis, and for nine years past I have had a trading house on the Verdigris, a tributary of the Arkansas, falling into it about seven hundred miles above its junction with the Mississippi.

Question 2nd. Are you largely engaged in the Indian trade on the Arkansas?

Answer. I introduce into that country from 15 to 20,000$ worth of
ds annually.
Question 3d. Over what extent of country west of the Mississippi has
ur personal observation extended?
Answer. As far as the South Branch of the Columbia, and on the head
ters of the Arkansas and Red River as far as New Mexico, and along
e whole course of the Arkansas.
Question 4th. Will you please to state the character of the country
st of the Mississippi in the latitude of the Red River and Arkansas
stined for the Indians, its climate, soil, water (fresh and salt), naviga-
on, woodland, prairie, grass, game, adaptation to tillage and raising
ock, and proximity to the wild or savage Indians?
Answer. The country is somewhat elevated and not liable to inunda-
ons, its climate is mild. winter open and never cold unless the wind
omes across the great Western prairies, and then freezes the streams
nly where the water is slack. The greatest fall of snow I have seen
vas less than 4 inches, and it did not remain on the ground more than
6 hours. The soil is fertile. The country abounds in fresh-water
springs, boiling either through gravel or limestone rock, and it also
abounds in salt water, much of it very strong; one spring at which forty
gallons will make one bushel of salt. Many salt streams exist, which
are good for stock. The salt fork of the Arkansas, which falls in
792 from the S. W. about 170 miles above Fort Gibson, is strongly
impregnated with salt, and when the Arkansas is low and that
fork happens to be flush communicates a saline taste to its waters for
some hundreds of miles. The great salt plain I never was at, but have
heard it often described both by white hunters and Indians. It is about
220 miles S. W. of Fort Gibson, on the south side of the river. It is
about ten miles long, one mile and upwards wide. All over this plain
the salt forms under the heat of the sun about the ⅛ of an inch thick on the
sandy soil. I have seen this salt, and bought it by the bushel from the
Osage Indians. It is white, of a small, fine grain. The Indians for hun-
dred of miles around come to gather it. No nation owns it, and it is the
general resort of the various tribes to procure a provision of this essential
article. About 50 miles further and a little to the S. of W. the rock salt
is found; a place where the salt is procured in masses. I have never
been there, but I have bought of this salt, and I am told by the Indians
that it is like a large rock which protrudes through the bluff bank of a
creek, and they quarry it with hatchets. They speak of it as being in
great quantities. In its native state it has a mixture of red veins through
it, faint or dull red and white. The Arkansas is navigable for seven
hundred miles for steamboats, barges, and keels for four or five months
in the year, and passing through the Indian country. The timber of the
country is oak, black walnut, hickory, ash, hackberry, locust, mulberry,
pine, cedars, pacane, cherry, bois-de'arc, and other kinds common to the
banks of the Mississippi. The country allotted to the Chactaws and the
Cherokees has a larger proportion of timbered land than that laid aside
for the Creek Indians, though the latter have enough for their wants.
Throughout this country indigenous fruits are found in the greatest
abundance. They consist in a variety of fine grapes, plumbs, black-haws,
straw and black berries, papas, persimmons, May apples, and a species of

pomegranade, which is much esteemed for its flavor. Roots, used as food, are also abundant, and the rivers furnish an ample supply of good fish. As regards the fertility of the prairie lands, I have raised from 45 to 50 bushels of corn to the acre, and from 18 to 20 of wheat, which weighed 64 pounds to the bushel. The prairies are covered with fine grass. Stock do well on it winter and summer. In winter the grass of the prai-
793 ries dies and cures, and the cattle and horses prefer it and keep fat upon it, but in cold, windy, wet weather they resort to the timbered land to get cane, wild rye, and winter grass. The country abounds in wild game, as the buffalo, elk, deer, antelopes, bears, and furred animals. Wild horses are found to the S. W. in numerous herds. I have seen the face of the country covered with them as far as the eye could reach, and often I have been obliged to keep out guards to fire at and keep them from breaking in upon my camp or traveling lines. The same remark is still more applicable to the buffaloe. As relates to the adaptation of the country for tillage, excellent crops of corn, wheat, rye, oats, &c., may be raised with equal abundance as could be produced from the best lands in the State of Missouri. And as regards the proximity of the wild or savage Indians, the nearest band is the Paw-nis Pick, whose village is about 250 miles from Fort Gibson. They raise corn and vegetables in small quantities. Other rambling tribes are to be found. They are the Padocas, Aïtaus [or Aïtans], Huitsitas, Hichas, and Consadas. Their range is from the Pawnees Picks to San Antonio, in Texas, to the south. The Commanches, Arrapahoes, Cayouwas, and other bands, ramble from the head waters of the Great Platte, Arkansas, Red River, in the direction to San Antonio, and parallel to that chain of the Rocky Mountains running south.

Question 5th. Will you state the actual condition of the Indians which have removed to that country?

Answer. The condition of the Cherokees and Creeks who have emigrated is good. My trading house is within the Cherokee country and adjacent to that of the Creeks, and I know their condition well. They have good log houses, many of which are double, and fields according to the means of the individual; I know some who have under fence and under culture about 150 acres of land. They raise all the kinds of grains and vegetables common to that latitude; patches of cotton and tobacco and of upland rice are common among them. Spinning wheels and looms are in common use. Stocks of cattle, horses, hogs, sheep, and goats are owned by these people; they have poultry, to wit, chickens, turkeys, ducks, and geese. Their women ride on side saddles and dress according to their respective means to do so in the manner and fashion of the whites. The same remark will apply to the dress of the men. The furniture of
794 their houses comprise chairs, tables, beds, bedsteads, and, in some instances, bureaus. The table in many houses is neatly set, and a good comfortable dinner, supper, or breakfast is served. Tea and coffee are in general use. They supply the garrison (Fort Gibson), their agent and traders with poultry, butter, eggs, wild game, and other articles that are usually brought to market at our towns. In the last year (1830) the Creeks have raised a surplus of corn above the wants of their own consumption, by estimate of at least 50,000 bushels, and the Cherokees this year supply by contract the corn required at Fort Gibson for the public service. The Cherokees already have three salines in

operation, and are adopting measures to put two or more in operation during the current year, and it is believed that they will ere long be able to export salt extensively. The game of this country furnishes a rich source of relief to the emigrants. A few weeks hunt puts it in their power to procure a quantity of meat for their subsistence, besides skins enough to obtain from the traders such goods as are required for their wants, and finally, other resources exist in the country which must eventually add greatly to the wealth and prosperity of these people so soon as they are developed. I mean the exploration of the rich lead, iron, and coal mines abounding in those regions. So convinced are the people who have removed, of these advantages, that I have heard many say that no inducement which could be offered would induce them to return east of the Mississippi. I know them to be satisfied, and that many send for their relatives to come and join them, bearing their expenses. Many that were idle and worthless in their old country are now industrious and doing well. The Indians themselves have pointed out instances of this to me, and said, there is a man that was nothing; he was a vagabond; now he has a house; he has stock of his own, and he works. Their children are numerous and healthy. The tribes are increasing and the country is salubrious.

Question 6th. How long since the tribes, and from what tribes, began to emigrate from the east to the west of the Mississippi?

Answer. Having seen the statement of the Gen'l Clark before the
795 committee on this head, I beg to refer to it as substantially what I have to say in this respect.

Question 7th. What proportion of the Choctaws have emigrated?

Answer. The period at which they commenced emigrating I have no knowledge of. The country assigned to them, however, from personal examination, I know to be the best for emigrants west of the Mississippi.

Respectfully submitted.

Feb'y. 21st., 1831.

(Signed) A. P. CHOUTEAU.

Hon. Mr. BENTON,
U. S. Senate.

DISTRICT OF COLUMBIA,
City of Washington, ss:

I, William R. Cox, Secretary of the United States Senate, do hereby certify that the foregoing is a true copy of a statement of A. P. Chouteau, dated February 21, 1831, before the Senate Committee on Indian Affairs, as fully as the same remains on the files of this office.

Attest:

WM. R. COX, *Secretary.*

WASHINGTON, D. C., *December 1, 1897.*

796 (Indorsed:) Court of Claims. No. 18932, the Choctaw Nation and the Chickasaw Nation *v.* The United States and the Wichitaw and affiliated bands of Indians. Copy of paper from the Sec'r'y of the U. S. Senate. L. P. Pradt, Asst. Att'y. Gen'l. Filed Dec. 4, 1897. Court of Claims.

797 Refer in reply to the following: Land 4989–1898.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 7, 1898.

The honorable
The SECRETARY OF THE INTERIOR.

SIR: I am in receipt, by Department reference for immediate report, of a letter dated January 28, 1898, from Mr. L. A. Pratt, Assistant Attorney-General, requesting for official use an answer to the following question:

"Since 1866 what requests have been made to the Government of the United States by the Choctaw and the Chickasaw nations, or either of them, for the removal of white intruders from their territory, and what has been done in consequence of such requests?"

In reply, I have to say that a thorough examination of the records and files of this office and of the annual reports of the Commissioner of Indian Affairs for each year since 1866 has been made, and from this examination it appears that prior to the completion of the Missouri, Kansas & Texas Railroad through the Indian Territory no complaints of intruders of any consequence were made by the Choctaw and Chickasaw authorities.

The first reference to the matter of intruders in the nations named appears to have been made in the annual report of the U. S. Indian agent in charge of the Choctaw and Chickasaw Indians, dated September 2,
1872. In that report the agent states that immediately upon the
798 railroad crossing the Canadian River into the Choctaw Nation a horde of roughs who had accompanied the road in its progress through the country north came flocking into this country prepared to continue their deeds of lawlessness and violence. Active measures were at once taken for their expulsion under the direction of this Department, and with the aid of the military they were removed. At the time that this report was made the railroad had been constructed and trains were running to Atoka, in the Choctaw Nation.

The next mention of intruders in these nations is contained in the annual report for 1874, from which I quote the following paragraph:

"A serious difficulty in the not distant future is before these tribes, arising from the large and steady influx of white people. Since the emancipation of their slaves these Indians have sought exemption from labor by inviting emigration of the lowest whites from the surrounding States, to whom they rent their lands for one-third of the crops raised. These whites, once in the country, are seldom known to leave, and thus their numbers are rapidly increasing; the result will be a mixture of the lowest white blood with the Indian, thus propagating instead of curing the indolence and unthrift with which they are already cursed, and from which they can be delivered only by the example and competition of industrious and enterprising white neighbors. Rather than that the country should be filled with this class of emigrants, it would be for the better interests of these Indians to open it to white settlement in the ordinary way."

A fairly complete history of the matter of intruders in the Choctaw and Chickasaw nations is contained from year to year in the annual reports of this office, to which reference is made below.

In this report I shall not undertake to give a statement of the applications made to this office by the authorities of the two tribes mentioned for the removal of one or two persons alleged to be intruders within said nations. It has only been within the last fifteen or twenty years that there has been claimed by the Choctaw and Chickasaw authorities to be any large number of intruders in their country. The applications for removal of intruders prior to that time were confined to one or two, possibly as high as five, individuals whose removal the authorities desired.

These calls for the removal of a few individuals are so numerous that it is almost impracticable without extending this report to an unreasonable length for a full statement relative to them to be given.

Under date of July 23, 1880, the Choctaw delegate in this city, Mr. P. P. Pitchlynn, communicated with this office and enclosed a copy of a joint resolution of the Choctaw general council directing the principal chief of that nation to request the President of the United States to take steps for the speedy removal of intruders and to instruct the delegation to present the matter in person and urge the importance of enforcing the laws prohibiting intrusions.

The Indian Office communicated with the U. S. Indian agent of the Union Agency on the subject July 31, 1880, transmitting him a copy of Mr. Pitchlynn's communication, with instructions that immediately upon complaint being made to him by the chiefs, or their properly constituted authorities of the Choctaw and Chickasaw nations of the presence of an intruder therein, to cause him to appear at such time and place as the agent might appoint to show cause why he should not be forthwith removed from the nation; that if the person charged with intrusion failed or neglected to do as directed, the agent would proceed to effect his removal with the aid of such police force as might be at his command, and if his force was insufficient for the purpose he was directed to report the facts fully to the Indian Office in order that the aid of the military might be called into requisition in conformity with the treaty.

Under date of April 30, 1881, J. F. McCurtain, principal chief of the Choctaw Nation, again made complaint against intrusions in said nation, and set forth the many flimsy and insufficient excuses on which numbers of intruders remained in the nation.

In acting on this and others on the same subject the office, under date of June 28, 1881, gave the U. S. Indian agent of the Union Agency, John Q. Tufts, full instructions in the premises, directing him to remove intruders from the Choctaw and Chickasaw nations, and also, among other things, to give full and complete notice of the intention of the Government to remove all persons in the said nations who were there without authority of law or in violation of law.

It appears from a report, dated July 11, 1881, from the agent, that notices were published by him in the Indian Journal and by posting at all post-offices in the Choctaw and Chickasaw nations, and that he said that there was no doubt but that all persons interested would be duly notified.

He also stated that he had no anticipation of trouble in carrying out the instructions of this office, and that in cases where there was
801 doubt as to the innocence of the intruder he would have given him the benefit of the doubt, and remove as few farmers who planted their crops in good faith as to their right to do so as possible. The result of the agitation of the question of intruders during that year, as above set forth, is shown briefly in the annual report of Mr. Tufts, dated September 30, 1881, from which it appears that most of the persons who were charged with being intruders had obtained permission or left the nations, and that the few who had refused to do either had been removed by the military. See Annual Report, 1881, page 104.

The delegates of the Choctaw, Cherokee, Creek, and Seminole nations, under date of March 23, 1882, again brought the matter of intruders to the attention of this office, and Mr. J. S. Standley, Choctaw delegate, followed this joint communication with an individual application for the removal of intruders in the Choctaw Nation, dated July 8, 1882. On receipt of Mr. Standley's communication he was advised in a letter dated July 14, 1882, that instructions would be issued to Agent Tufts upon the presentation of a list of intruders to be furnished by the Choctaw authorities to investigate the facts with a view to the removal of all such persons as should be found trespassing as alleged and who were without permission, and those who could not present prima facie just claims to citizenship in the nation, and such instructions were given Mr. Tufts by a letter bearing the same date.

802 By a letter dated February 6, 1883, the Choctaw delegates in this city, filed in this office a statement from the principal chief of the Choctaw Nation, embracing the names of some 2,800 persons alleged to be intruders in the Choctaw Nation. In a report dated March 1, 1883, Mr. Tufts advised this office that he had received a similar list to the one above described from the principal chief of the Choctaw Nation; that many of the names appearing thereon are of the same persons removed by the military under his direction during the summer of 1881, and who returned to the nation the same day that they were removed. In discussing the matter Mr. Tufts stated that the removal of intruders from Indian reservations under the "present statute is an expensive farce;" that a large number of those reported by the chief for removal claim citizenship in the Choctaw Nation; that others claim rights to remain in the nation by virtue of contracts made with individual Choctaws. No action appears to have been taken on this matter until March 14, 1884, when the matter was submitted in a report to the Department with the recommendation that Agent Tufts be instructed to notify all disputed claimants to citizenship in the Choctaw Nation to appear before the proper tribunal and submit their claims for adjudication as provided by the Choctaw laws; that failing to do so, they be regarded as intruders and removed from the Territory, and that any party feeling aggrieved by the Choctaw tribunal be allowed thirty days in which to appeal to the agent, and at the expiration of that time be deemed an intruder if no appeal be taken.

803 Also that the agent be directed to hear all cases of appeal from the decision of the Choctaw authorities, giving proper notice to the principal chief of the time and place of hearing, receiving, and considering such proper evidence without distinction as to the face of wit-

nesses as may be presented, and that he be directed to submit all cases of appeal with the evidence and his findings thereon to this office for final determination by the Department, and all persons finally adjudged to be intruders be removed, allowing them a reasonable time in which to dispose of their improvements and property.

By letter of March 15, 1884, the Department concurred in the recommendations of this office, and Agent Tufts, under date of March 22, 1884, was instructed to proceed in accordance therewith. It does not appear that any other steps were taken to remove the persons, alleged in the list referred to, to be intruders in the Choctaw Nation.

Contemporaneously with the action taken by this Department, as above set forth, the matter of intruders in the Five Civilized Tribes, among which are the Choctaw and Chickasaw nations, was discussed in the annual report of the agent, 1882 (see Annual Report, 1882, p. 88), and by the Commissioner of Indian Affairs and the agent, in 1883. (See Annual Report, 1883, pp. LIV and 88, and also Annual Report, 1884, p. XLIII.)

Under date of May 28, 1884, the agent for the Union Agency transmitted copy of a communication from the governor of the Chickasaw Nation, with a list of intruders whose removal he desired, recommending that troops be furnished as requested by the governor for the removal of all intruders in the Chickasaw Nation.

804 Replying to this report, the office under date of June 10, 1884, advised Agent Tufts that the Department did not concede to the Chickasaw Nation the exclusive right to determine who were intruders, or that the Government is bound to remove all persons adjudged to be intruders by the Chickasaw courts or council, the Department reserving the right to determine for itself the existence and extent of the exigency upon which a requisition for the removal of intruders might be based, and he was instructed to investigate the cases mentioned by the governor of the Chickasaw Nation, and report to this office the names of those who might be unable to show a prima facie right to remain, and on receipt of his report steps would be taken to insure prompt action under the rules of the Department.

In a letter dated July 28, 1885, the principal chief of the Chickasaw Nation made complaint of a number of intruders and outlaws in that nation. This was forwarded by this office to the Department, and by the Secretary of the Interior under date of August 20, 1885, to the War Department, with the request that military aid be furnished in the arrest of the outlaws and the removal of the intruders. It appears that this military aid was provided for by the War Department, but on the arrival of Captain Wessells, 3rd Cavalry, commanding Troop H, detailed for the purpose, in the Chickasaw country, he was informed that the parties referred to by the Chickasaw authorities had left the country.

Under date of March 26, 1886, Mr. R. L. Owen, U. S. Indian agent for the Union Agency, reported to this office that he had located ranches, brands, and names of the parties holding cattle number-

805 ing 150,000 head, upon the public domain of the Chickasaw Nation against its will and without paying any tax, and which he proposed to remove; but fearing his agency police would not be strong enough to manage them should they offer resistance, asked for the cooperation of the U. S. troops at Forts Reno and Sill to prevent conflict

during the removal. The matter having been submitted to the Secretary of the Interior he, in a letter dated April 9, 1886, directed the removal of the cattle, together with the owners thereof, or other persons found therewith, in the Chickasaw country against the will of the Chickasaw Nation, under the provisions of section 2149 of the Revised Statutes.

By letter dated April 9, 1886, Mr. Owen was informed of the authority granted by the Secretary and the directions contained in the said letter of April 7, 1886, and instructed to proceed to effect the removal in accordance with the Department's direction, reporting his action to this office.

Under date of May 31, 1886, Agent Owen reported his actions under the instructions above set forth, in which it appears that on entering the Chickasaw country, the cattlemen intruding on the domain of that nation, who had already begun to "round-up" the cattle for the spring "round-up," attempted to evade the agent by flight, stating that they were alarmed; but the agent believed that their course was intended to discourage him in the execution of the order by presenting for his consideration a large area of country partly timbered, with the cattle scattered far and wide to be collected.

806 In view of the situation, it appeared that it was impracticable for the agent to remove the cattle with the force at his command and the small contingent fund available for the purpose. He therefore issued notices to the United States citizens holding cattle unlawfully on the Chickasaw domain, calling on them to organize outfits at once to proceed to gather and hold upon the ranches in close herd all cattle, horses etc., until such time as they could be inspected and permission given for their removal, and that every person refusing or neglecting and evading his summons would be proceeded against under certain sections of the Revised Statutes mentioned.

In this report the agent promised to make further and final report on the conclusion of his efforts to carry out his instructions in the fall, which final report does not appear to have been made; but it seems that on October 14, 1886, the Chickasaw Nation adopted a law contemplating the taxing of cattle held in the nation unlawfully, and in discussing this law the Secretary of the Interior held that so far as the said act of October 14, 1886, prescribed regulations for enforcing the provision of section 7 of the permit laws of the Chickasaw Nation, the citizens of the United States residing in the Chickasaw country under permits were subject to its provisions, but that the law would not be recognized as enforcible by the Chickasaw authorities against or as having any effect whatever upon any citizens of the United States or other persons who might be properly classed as intruders within the Chickasaw territory under article

807 7 of the treaty of 1855, and authorized this office to instruct the agent for the Union Agency to notify the proper Chickasaw authorities who had impounded cattle belonging to citizens of the United States that all cattle the property of such citizens as were not residing in the Chickasaw Nation under the Chickasaw permit law, which had been illegally seized or distrained upon, under the provisions of the said act of October 14, 1886, to restore the same to the rightful owners, and also to notify the Chickasaw authorities that the proper remedy of the nation

under the laws and treaties against citizens of the United States and other persons, and their property found unlawfully within the limits of the Chickasaw country, and not being there under the permit law, was in a prompt appeal to the United States Indian agent for expulsion of the intruders and their prosecution under the laws of the United States.

With exception of the matter of intruding cattlemen in the Chickasaw Nation, as above referred to, the correspondence between December 1, 1884, and August 14, 1890, respecting intruders in the Choctaw and Chickasaw nations can be found in Senate Ex. Doc. No. 219, 51st Congress, 1st session, a copy of which I transmit herewith for convenient reference.

From said document, on page 98, it will be observed that under date of July 24, 1888, the Secretary of the Interior directed the removal of intruders from the Choctaw and Chickasaw nations. It appears from the records and files of this office that the authority granted by the
808 Secretary in said letter was not executed on account of delays made necessary by the failure of the Choctaw and Chickasaw authorities to present the names of the intruders in such a way as to properly identify them, the other pressing duties of the Indian agent which prevented him from taking the matter up, the change of Administration, the appointment of a new agent, etc., until some time in the summer of 1891.

A very full history of the action of the Government with respect to the matter of intruders in the Choctaw and Chickasaw nations can be found in the annual report of this office for 1890, page LXXVII and 91; also annual report of this office of 1891, pages 80 and 241.

The statement in the annual report for 1891 is especially full. Since the action taken as shown by said report, it does not appear from the records and files of this office that there has been any organized attempt, with one exception, to remove intruders from the Choctaw and Chickasaw nations, but the office has from time to time received applications from the authorities of these two tribes for the removal of intruders. After the failure of the agent in 1891 to find any considerable number of intruders in the Chickasaw Nation, it does not seem that any further steps were taken under the authority of the Secretary of the Interior given in 1888, and renewed in July 24, 1890, as above described.

The exception to which I have above alluded was the removal from the Choctaw Nation during the autumn and winter of 1894 and 1895 of intruders in that nation, composed of striking miners who had
809 quit work in the coal mines at Krebs, Lehigh, and Coalgate, within the said nation, on account of a general strike of miners throughout the country.

On account of the conduct of the miners who were out on a strike and of the threatened destruction of property within the Choctaw Nation, the governor of that nation, sometime about June 23, 1894, requested the U. S. Indian agent to remove the intruding miners from said nation. On this request being forwarded to this office, the agent was instructed to obtain lists of intruders to be removed, and upon the submission of said lists the War Department was requested to furnish troops necessary to assist him in their removal. It seems that as a result of the complaints from the Choctaw authorities, something over 100 persons were removed

from the mining communities of Alderson, Hartshorne, and Krebs, a
that further removals were suspended at the request of the governor
the Choctaw Nation. An account of this matter will be found in
Indian Office report for 1894, pages 74 and 143.

By letter dated March 20, 1895, the principal chief of the Choc
Nation transmitted a petition, affidavits, and certified copy of a law of
nation in relation to intruders in the Choctaw Nation, and stated tha
copy of the same had been forwarded to the U. S. Indian agent. Act
on these, the office under date of April 20, 1895, wrote to the Ind
agent, advising him that he had authority under the Revised Statu
section 2147, to remove intruders in the Choctaw Nation, which autho
should be exercised at his discretion. There is no evidence t
810 the agent removed any one on account of the application of
governor of that nation above cited.

On receipt of a letter dated June 15, 1895, from F. M. Fox, per
collector of the Choctaw Nation, charging that noncitizens in said na
had refused to pay the permit tax imposed under the laws of the nat
this office communicated with the Indian agent under date of June
1895, and directed him to investigate Mr. Fox's complaint and take
action in the premises as seemed warranted by the facts and to repor
this office the action taken thereon.

The agent reporting under date of July 16, 1895, stated facts wh
warranted his recommendation that a troop of cavalry and the neces
wagons be placed at his disposal to aid him in the removal of the intru
complained against, together with their goods and effects, outside of
limits of the Union Agency.

Replying to this recommendation under date of July 23, 1895,
agent was informed that while the office desired to render him ev
assistance in the discharge of his duties, it was not deemed expedien
ask for troops in that case, at least until the agency shall have ascerta
by a fair trial that the removals could not be accomplished with the f
at its command.

The result of the action of the Government on this demand of
Chickasaw authorities is shown by report of September 4, 1895, from
Indian agent to have been the compliance by all the parties compla
against with the requirements of the Chickasaw permit laws and t
remaining in the nation.

810½ The foregoing is briefly a statement of the demands of
Choctaw and Chickasaw authorities on the Government for
removal of intruders generally from those nations, and the action of
Government on such demands.

The request of the Department of Justice covers such a long perio
time, and the correspondence on the subject in this office is of such g
volume, that a full and complete history of the same could not be
nished within a reasonable time, or in time for use in the Court of Cla
for which the Department of Justice indicates the information calle
is desired.

Very respectfully, your obedient servant,

W. A. JONES, *Commissione*

Murchison. (H)

811 DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1898.

The Honorable
The ATTORNEY-GENERAL.

SIR: In response to your communication of the 28th ultimo requesting an official answer to the following question:

"Since 1866, what requests have been made to the Government of the United States by the Choctaw Nation and the Chickasaw Nation, or either of them, for the removal of white intruders from their territory, and what has been done in consequence of such requests?"

I have the honor to transmit herewith copy of a communication of the 7th instant, from the Commissioner of Indian Affairs, to whom your letter was referred.

Very respectfully,

THOS. RYAN,
First Assistant Secretary.

731 Ind. Div., '98, one enclos.

812 (Indorsed:) Court of Claims. No. 18932. The Choctaw Nation and Chickasaw Nation *vs.* The United States, &c. Interior Dep't transmits certain information in response to request of 28th ult. Filed Feb. 8, 1898. Court of Claims.

813 In the Court of Claims.

THE CHOCTAW NATION ET AL. *vs.* THE UNITED STATES ET AL. } No. 18932.

Motion for request upon the Secretary of the Interior for an original document or official copy thereof.

Come now defendants by their attorneys and move the court for a request upon the Secretary of the Interior to cause to be produced in the court, on Tuesday, the 8th day of February, A. D. 1898, the letter of Hiram Price, Commissioner of Indian Affairs, to the Secretary of the Interior, dated January 26th, 1885, or, in default thereof, any official record thereof showing the precise wording of said letter as signed.

CHARLES C. BINNEY,
Special Attorney for the U. S.

J. M. VALE,
One of the Attorneys for the Deft. Inds.

814 (Indorsed:) No. 18932. The Choctaw Nation et al. *vs.* The U. S. et al. Allowed: C. C. N. Motion for a request upon the Secretary of the Interior for an original document or official copy thereof. Filed Feb. 4, 1896. Court of Claims. Issued Feby. 4, 1898: J. R. Charles C. Binney, special atty. for U. S.: J. M. Vale, one of the attys. for deft. Inds.

815 [9 enclosures (map).]

Refer in reply to the following: Land, 1491–85.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 26, 1885.

The Honorable
The SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge the receipt, by Department reference of the 23rd instant, for prompt report of a resolution of the Senate adopted on the 22nd instant, in the following words, to wit:

"Whereas the United States in 1866 acquired, from the Creek and Seminole Indians, by treaty, certain lands situate in the Indian Territory, a portion of which have remained unoccupied until the present time; and

"Whereas a widely extended belief exists that such unoccupied lands are public lands of the United States, and as such subject to homestead and preemption settlement, and pursuant to such belief a large number of citizens of the United States have gone upon them claiming the right to settle and acquire title thereto under the general land laws of the United States; and

816 "Whereas it is understood that the President of the United States does not regard said lands as open to settlement, and believes it to be his duty to remove all persons who go upon the same, claiming the right to settle thereon, and for that purpose has directed the expulsion of the persons now on said lands by the use of military force, and there seems to be a probability of a conflict growing out of the attempt to expel said persons so claiming right and attempting to settle: Therefore

"Resolved, That the President be requested to advise the Senate as to the status of the lands in question as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reason for the same, together with any other information in his possession bearing upon the existing controversy.

The resolution involves two principal inquiries:

First. The status of the lands in question, as viewed by the Executive.

Second. The action taken to expel persons seeking to settle thereon, and the reasons for the same.

I have the honor to report thereon as follows:

I. As to the status of the lands.

817 By the first article of the treaty with the Creeks and Seminoles, August 7, 1856 (11 Stat., 699), the Creeks ceded and conveyed to the Seminoles "the tract of country included within the following boundaries, viz: Beginning on the Canadian River a few miles east of the ninety-seventh parallel of west longitude, where Ock-hi-appo or Pond Creek empties into the same; thence due north to the North Fork of the Canadian; thence up said North Fork of the Canadian to the southern line of the Cherokee country; thence with that line west to the one hundredth parallel of west longitude; thence south along said parallel of longitude to the Canadian River; and thence down and with that river to the place of beginning," and the United States thereby solemnly

guaranteed that the Seminole Indians should hold said lands by the same title and tenure as that by which they were guaranteed and secured to the Creeks.

The preamble to the treaty with the Creeks of June 14, 1866 (14 Stat., 785), recites that "the United States require of the Creeks a portion of their land whereon to settle other Indians," and by the third article of that treaty it provided that, "in compliance with the desire of the
818 United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south, * * * and in consideration of the said cession of the west half of their lands, estimated to contain three millions two hundred and fifty thousand five hundred and sixty acres, the United States agrees to pay the sum of thirty (30) cents per acre, amounting to nine hundred and seventy-five thousand one hundred and sixty-eight dollars, in the manner hereinafter provided * * *."

This cession is indicated on the accompanying map as follows: That portion of No. 5 which lies west of the dotted line; that portion of No. 19 which lies east of the dotted line; all of Nos. 15, 16, 17, 18, and 20; that portion of No. 11 which lies south of the Cherokee line (dotted) and on the left bank of the Cimarron River; and that portion of No. 22 which lies between the Cimarron River and the North Fork of the Canadian River, and the west line of No. 20, and the south line of the Cherokee country or of No. 14 (S. Ex. Doc. 109, 48th Cong., 1st sess., p. 4).

Of the consideration money agreed to be paid by the United
819 States to the Creeks in respect of the lands so ceded the sum of three hundred thousand dollars ($300,000) was duly appropriated and paid in accordance with the terms of the treaty (see sundry civil act July 28, 1866, 14 Stat., 319; Ind. Appr. act July 15, 1870, 16 Stat., 341); and interest at five per cent on the balance, or sum of six hundred and seventy-five thousand one hundred and sixty-eight dollars ($675,168), is annually appropriated by Congress and placed to the credit of the treasurer of the Creek Nation with the assistant treasurer at Schoharis, Mo., under the Indian appropriation act of March 3, 1875 (18 Stat., 448).

The preamble to the treaty with the Seminoles of March 21, 1866, (14 Stat. 755) recites that "the United States * * * in view of its urgent necessities for more lands in the Indian Territory, requires a cession by said Seminole Nation of a part of its present reservation, and is willing to pay therefor a reasonable price, while at the same time providing new and adequate lands for them," and the third article of that treaty provides that, "In compliance with the desire of the United States to
820 locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation, under the provisions of article first, treaty of the United States with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856. In consideration of said grant and cession of their lands, estimated at two millions one hundred and sixty-nine thousand and eighty (2,169,080) acres, the United States agree to pay said Seminole Nation

the sum of three hundred and twenty-five thousand three hundred and sixty-two ($325,362) dollars, said purchase being at the rate of fifteen cents per acre."

By the same article the United States granted to the Seminoles a portion of the lands obtained from the Creeks by the treaty of 1866, above cited, sufficient to make two hundred thousand (200,000) acres, as and for the national domain of the Seminole Nation, for which the Seminoles agreed to pay the sum of one hundred thousand dollars ($100,000) to be deducted from the sum paid by the United States for Seminole lands under the preceding stipulations.

The 200,000 acres so sold to the Seminoles is indicated on the map by that portion of No. 5 which lies west of the dotted line. That
821 portion lying east of the dotted line, containing 175,000 acres, was subsequently purchased from the Creeks by the Seminoles, act of August 5, 1882, 22 Stat. 265 (see S. Ex. Doc. 109, supra, pp. 4, 5).

The cession made by the Seminoles to the United States is represented on the accompanying map as that part of No. 19 which lies west of the dotted line; all of No. 21, and that portion of No. 22 which lies west of No. 21 and between the Canadian River and the North Fork of the Canadian, and the south line (dotted) of the Cherokee country (No. 14) and the 100 of longitude.

Of the consideration money agreed to be paid by the United States to the Seminoles in respect of the lands so ceded, the sum of one hundred and fifty-five thousand three hundred and sixty-two dollars ($155,362) was duly appropriated and paid, in accordance with the terms of the treaty (see sundry civil act, July 28, 1866, 14 Stat., 319); and interest at five per cent on the balance, or sum of seventy thousand dollars ($70,000), is annually appropriated by Congress and placed to the credit of the treasury of the Seminole Nation with the assistant treasurer at St. Louis, Mo., under the act of April 15, 1874 (18 Stat., 29).

822 Upon the lands ceded to the United States for the purposes mentioned in the Creek treaty of 1866, the following-named tribes of Indians, exclusive of the Seminoles, as hereinbefore mentioned, have been located, viz:

Sac and Fox, under treaty of February 18, 1867, 15 Stat., 496 (No. 17 on map, containing 479,667 acres).

Pawnee, under act of Congress of April 10, 1876, 19 Stat., 28 (that portion of No. 11 on map within the Creek cession, containing 53,005.96 acres).

Iowa, and such other Indians as the Secretary of the Interior may see fit to locate thereon, by Executive order dated August 15, 1883 (No. 16 on map, containing 228,152 acres).

Kickapoo, by Executive order dated August 15, 1883 (No. 18 on map, containing 204,466 acres).

Pottawatomie and Absentee Shawnee, under act of Congress of May 23, 1872, 17 Stat., 159 (that portion of No. 19 on the map which lies east of the dotted line and within the Creek cession. The other portion is included in the Seminole cession and is hereafter referred to).

Cheyenne and Arapaho, by Executive order of August 10, 1869 (that portion of No. 22 on the map lying within the Creek cession, as hereinbefore indicated).

The remaining portions of the Creek cession, being tracts numbered 15 and 20 on the map, are hitherto unassigned. Their area be given hereafter.

Upon the lands ceded to the United States by the Seminoles for the poses declared in the treaty of 1866, the following tribes of Indians e been located, viz:

Pottawatomie and Absentee Shawnee, under act of Congress of May 1872, 17 Stat., 159. (That portion of No. 19 on the map which west of the dotted line, making, with that portion east of the dotted and within the Creek cession hereinbefore referred to, a total area of 5,877 acres.)

Cheyenne and Arapaho, by Executive order of August 10, 1869. hat portion of No. 22 on the map, covered by the Seminole cession, as reinbefore indicated.)

The remaining portion of the Seminole cession, being tract numbered on the map, is hitherto unassigned.

	Acres.
contains an area of	495,093.37
dd tract No. 15 (Creek cession), unassigned	677,155.76
tract No. 20 do do	715,551.34
Making a total of	1,887,800.47

hich, according to the understanding of this office, to-day constitutes what are commonly called the "Oklahoma lands."

24 The third article of the treaty of 1856 with the Creeks and Seminoles (11 Stat., 699) provides:

"The United States do hereby solemnly guarantee to the Seminole Indians the tract of country ceded to them by the first article of this convention, and to the Creek Indians the lands included within the boundaries defined in the second article thereof; and likewise that the same shall respectively be secured to and held by said Indians by the same title and terms by which they were guaranteed and secured to the Creek Nation by the fourteenth article of the treaty of March twenty-fourth, eighteen hundred and thirty-two, the third article of the treaty of February fourteenth, eighteen hundred and thirty-three, and by the letters patent issued to the Creek Nation on the eleventh day of August, eighteen hundred and fifty-two. * * * Provided, however, that no part of the tract of country so ceded to the Seminole Indians shall ever be sold or otherwise disposed of without the consent of both tribes legally given."

The fourth article provides: "The United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribe of Indians, 825 and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within or annexed to any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same."

The fifteenth article guarantees to the Creeks and Seminoles the unrestricted right of self-government so far as may be consistent with the

Constitution of the United States and the laws made in pursuance thereof to regulate trade and intercourse with Indian tribes. It also gives them full jurisdiction over persons and property within their respective limits, who are citizens by birth or adoption, and provides for the removal of all other persons not legally within their limits, assisted if necessary by the military of the United States for that purpose, &c.

The first article of the treaty of 1866 with the Creeks (14 Stat., 785) guarantees them quiet possession of their country, and the third article provides that the eastern half of the Creek lands, being retained by them,

shall be forever set apart as a home for the Creek Nation.

826 The tenth article prohibits the United States from legislation

that shall in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs, and by the twelfth article the United States expressly reaffirms and reassumes all prior obligations not inconsistent therewith.

Similar provisions will be found in the treaty of 1866 made with the Seminoles (14 Stat., 755.)

For some years past it has been claimed by interested parties that the unoccupied lands ceded to the United States by the Creeks and Seminoles under the treaties of 1866 with those tribes are in reality a part of the public domain, freed from any Indian title or trust, and as such open to public settlement under the general land laws of the United States. Upon this theory repeated attempts have been made by organized bands of citizens of the United States to take forcible possession of certain portions of said lands, which have only been frustrated by the aid of the military forces of the United States acting under Executive proclamations hereinafter referred to.

The provisions of the treaties of 1866, with the Creeks and Seminoles in respect of the ceded lands, have already been given, and, as indicating

the views and policy of the Department as announced at the out-

827 set of the trouble, I invite attention to a letter, dated May 1, 1879, written by the Hon. Secretary of the Interior to the Hon. Secretary of War, upon the occasion of the first organized invasion of the Indian Territory.

After referring in detail to the several acts of Congress under which the Indian Territory was created and defined as Indian country, also to the several earlier treaties with the Cherokees, Creeks, Choctaws, and Chickasaws and Seminoles, the Hon. Secretary said:

"By these treaties title was guaranteed to the several tribes, and it was provided that the lands should never be included within the territorial limits or jurisdiction of any State or Territory, but should remain subject to the intercourse laws, which laws have as before stated continued in force in all parts of the Territory to the present time.

828 "The title acquired by the Government by the treaties of 1866 was secured in pursuance and furtherance of the same purpose of Indian settlement which was the foundation of the original scheme.

"That purpose was the removal of Indian tribes from the limits of the political state and territorial organizations and their permanent location upon other lands sufficient for the needs of each tribe.

"These lands being ample in area for the purpose, it has become a settled policy to locate other tribes thereon as fast as arrangements can be

, and provisions have been constantly made by treaties, agreements,
cts of Congress to effect these objects.
That purpose is expressly declared in the said treaties. The cessions
ne Creeks and Seminoles are stated to have been made 'in compli-
with the desire of the United States to locate other Indians and
lmen thereon.'
These words must be held to create a trust equivalent to what would
been imposed had the language been for the purpose of locating
ians and freedmen thereon."

* * * * * * *

"The Executive order of August 10, 1869, for the Cheyennes and Arapahoes also covers all that portion of the Creek and Semi-
e lands west of the 98th meridian and south of the Cimarron River.
'It will be thus seen that the Indian country, as defined by statute,
braces the whole Indian Territory. No part of it has been brought
der the operation of general laws or made subject to settlement as pub-
lands. It is attached as 'Indian country,' for the enforcement of the
ercourse laws alone, to the western district of Arkansas by section 533
the Revised Statutes. It is expressly named as Indian country in the
t of March 3, 1875, 'to establish the boundary between the State of
ansas and the Indian country,' which recognizes the proper closing of
e surveys of the public lands upon its boundaries as originally marked.
"The consolidated provisions of the intercourse laws embrace two
tire chapters of the Revised Statutes, sections 2111 to 2157, inclusive.
"The fact that they have not in terms reenacted the boundaries
of the Indian country should not, in my judgement, be held to
destroy the previously recognized location, as the direct effect of
ch conclusion would render inoperative the entire legislation provided
r its government. Its recognition by the revised compilation and by
bsequent statutes has heretofore been noted.
"The persons now attempting settlement therein allege the acquisition
f these lands in 1866, as the date when they became subject to the
eneral laws of the United States. Thirteen years have now elapsed
nd Congress has made no attempt to provide for them the necessary
achinery for the execution of the general laws; but on the contrary, by
ecent enactment, has expressly provided for the continued jurisdiction
f the district court of western Arkansas. This must be held to nega-
ive an assumption that they are released from the special Indian pur-
poses for which they were acquired and to which they have been
ontinuously devoted.
"For the views of the Judiciary Department, see opinion of August
12, 1873 (14 Opinion, 290), where the whole subject is elaborately con-
sidered, and which is in entire accord with the foregoing conclusions so
far as it relates to the region of country in question." (See corre-
831 spondence in S. Ex. Doc. No. 20, 46th Cong., 1st sess., pp. 15–18,
copy herewith.)

The interpretation placed by the Hon. Secretary upon the various statutes and treaties referred to in connection with the Indian Territory was afterwards sustained by the United States court for the western district of Arkansas in the case of The United States v. Payne, decided at the May term of said court, 1881, in which the same question was raised

as that which forms the groundwork of the resolution now under consideration. (See 2 McCrary, U. S. C. C. Reports, 8th circuit, p. 290; also pamphlet copy decision of U. S. Judge I. C. Parker, herewith.)

That Congress still recognizes the ceded territory as Indian country is apparent from the recent act of January 26, 1883 (22 Stats., p. 400), annexing the whole of the Indian Territory, except those portions occupied by the Cherokee, Creek, Choctaw and Chickasaw, and Seminole Indian tribes, to the United States judicial district of Kansas and the northern district of Texas, respectively, with exclusive original jurisdiction in the United States district courts at Wichita and Fort Scott, Kansas, and at Graham, Texas, respectively, over all offenses committed against
832 United States laws within the limits of the territory so annexed to said district, but providing that nothing in the act shall be construed to give to said district courts of Kansas and Texas, respectively, any greater jurisdiction in that part of said Indian Territory so annexed, respectively, to said district of Kansas and said northern district of Texas than might theretofore have been lawfully exercised thereon by the western district of Arkansas; nor shall anything in the act contained be construed to violate or impair in any respect any treaty provisions whatever.

The status of the unoccupied lands of the Indian Territory, of which those mentioned in the resolution form a part, as viewed by this Department, is so fully set forth in Department letter above quoted, fortified by judicial opinions also referred to, that it appears unnecessary to add anything on the subject beyond remarking that as has already been shown it has been the established policy of the Department in performance of the conditions mentioned in the treaties by which the Govt. acquired lands or the right to use them in the Indian Territory for Indian purposes, whenever the best interests of the Government and the
833 Indians demanded it, to appropriate such unoccupied lands for the settlement of Indian tribes, where their removal to the Indian Territory is not prohibited by existing treaty stipulations or laws.

II. As to the action taken to expel persons attempting to settle on said lands and the reasons for the same.

The limited time at my disposal for the preparation of this report renders it absolutely impossible to accompany it with the usual copies of papers and correspondence in connection with this portion of the subject. I shall therefore be compelled to give a brief history only of the operations, taken from the annual reports of this office, leaving the correspondence to be supplied hereafter if it be required.

834 In the early part of the winter of 1878–79 an extensive scheme was organized to take forcible possession of certain lands in the Indian Territory which had been ceded to the Government for Indian purposes. Letters were published and circulated in the States surrounding the Territory by parties interested in the project, declaring that these were public lands, and were open to settlement by citizens of the United States. In a short time a large number of persons from Missouri, Kansas, and Texas were discovered in the act of entering the Territory, carrying their household goods and farming implements, with the evident purpose of making permanent settlement. This unlawful conspiracy was ascertained to be so extensive as to necessitate the adop-

on of speedy and vigorous measures in order to prevent serious complitions and trouble with the Indians. The attention of the President aving been called to the matter by this Department, on the 26th of pril, 1879, he issued a proclamation warning all persons who were ntending or preparing to remove to the Indian Territory without perission of the proper authorities against attempting to settle upon any lands in said Territory, and notifying those who had already so
835 offended that they would be speedily removed therefrom by Indian agents, and that, if necessary, the aid and assistance of the military would be invoked to enforce the laws in relation to such intrusion.

Accordingly, upon the recommendation of the Department, troops were posted at available points along the lines between the Indian Territory and Missouri, Kansas, and Texas, to prevent unauthorized parties from entering the Territory, and detachments and scouts were detailed to arrest and remove such intruders as could be found within its borders. By the diligent cooperation of the military authorities with the Indian Bureau, the intruders were speedily removed, and the unlawful invasion was checked. (For copies of correspondence and papers in connection with this movement, see S. Ex. Doc. No. 20, 46th Congress, 1st session, copy herewith.)

In February, 1880, information reached this office that a large number of persons were again organizing at various places in southern Kansas for the purpose of entering the Indian Territory and making settlements on lands therein which had been ceded to the Government for Indian purposes. To encourage this movement the promoters of the
836 scheme had publicly represented that the President had changed his views in regard to the status of the lands in question since the issuance of his proclamation of April 26, 1879, and that in his last annual message he had admitted that said lands were public and should be settled upon, and hence they were violating neither the President's proclamation nor any law of the United States in emigrating to and locating upon such lands.

The attention of the President having been called to the matter by this Department, he issued a second proclamation, dated the 12th of February, 1880. This proclamation declared the representations made to be wholly without foundation, and to have originated only in the minds of evil-disposed persons, and again warned all parties who were intending or preparing to remove upon such lands, or into the Indian Territory, without permission of the proper authorities, against any attempt to so remove and settle upon any of the land of said Territory. It notified all persons so offending that they would be speedily removed therefrom by the Indian agents, and that, if necessary, the aid and assistance of the military would be invoked to carry into execution the laws of the
837 United States in such case made and provided.

Upon the recommendation of this Department, a proper disposition of troops was made by the War Department along the line between the Indian Territory and Kansas, to prevent unauthorized persons from entering the Territory, and details were made for the arrest and removal of such intruders as might be found within its borders. These precautions resulted in the arrest by the military, on or about the 15th of May, 1880, of one D. L. Payne, the recognized leader of the movement, and

some eleven of his followers, who had established a camp at a point about forty (40) miles east of Fort Reno, and about a mile and a half south of the North Fork of the Canadian. Pursuant to an order of the Secretary of War, the intruders were conducted to a point outside the Territory and there discharged, with a warning not to return.

On the 15th of July, 1880, Payne and some twenty (20) associates were again discovered in the Indian Territory, were again arrested by the United States forces, and, in pursuance of the order of the President, turned over to the United States marshal for the western district of Arkansas, to be held for prosecution under the United States laws
838 relating to the intruders in the Indian country. The prisoners were subsequently released on bail, to appear for trial at the November term of the United States district court.

At the subsequent May term of said court a civil suit in the nature of an action of debt, brought against Payne in the name of the United States, to recover the statutory penalty of one thousand dollars ($1,000.00), was tried, and judgment rendered against him.

839 During the year 1882 two attempts at settlement by the so-called "Oklahoma Colony" were made under the leadership of D. L. Payne, first in May, when Payne, with a party of followers, was arrested in the Indian Territory by the military, and afterwards released on the Kansas border; and again in the latter part of August, when, with a party consisting of seven men and two women, and an outfit of horses, wagons, &c., he was again captured by the troops whilst endeavoring to effect a settlement at Oklahoma. Upon this last occasion, refusing to go out of the Territory peacefully, the party were disarmed and taken to Ft. Reno as prisoners. Upon the recommendation of this Department they were turned over by the military to the United States civil authorities at Ft. Smith, Ark., by whom, it is reported, they were subsequently released to appear at the November term of the U. S. court for the western district of Arkansas, to answer to civil suits for the recovery of the prescribed penalty of $1,000. During the year 1883 Payne and his party of Oklahoma colonists again made two ineffectual attempts at settlement in the Indian Territory, requiring the aid of the military, at great
840 expense to the Govt., to effect their removal. In 1884 Payne again twice sought to obtain a foothold in the Territory, first in May, when, with a party of about fifty, he endeavored to effect a settlement on the unoccupied lands south of the Cimarron River, from whence they were dislodged by the military, not without considerable show of resistance, and later in June, when, with largely increased numbers, he established himself on the Cherokee Outlet lands south of Hunnewell, Kans., locating settlements at various points along the Arkansas River, with headquarters at Rock Falls, four miles south of the Kansas line. The intruders were removed by the military on the 7th of August last, Payne and others, old offenders, being again arrested and turned over to the civil authorities at Ft. Smith. (For fuller particulars of this movement see Annual Rept. of this office for 1884, page XL, copy herewith.) This office is not advised what action was taken by the civil authorities at Ft. Smith, but it appears from the copies of the official reports of the War Department on file in this office that a large body of men, under the leadership of one Couch, have again entered the Territory, and are now

amped at or near the Cimarron River, whence they defy the military to remove them. The authority for the use of the military in such cases is conferred on the President by sections 2147–2150 of the Revised Statutes, which severally read as follows:

"Section 2147. The superintendent of Indian affairs and Indian agents and sub-agents shall have authority to remove from the Indian country all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal."

"Section 2150. The military forces of the United States may be employed in such manner and under such regulations as the President may direct."

"First. In the apprehension of every persons who may be in the Indian country in violation of law; and in conveying him immediately from the Indian country by the nearest convenient and safe route to the civil authority of the Territory or judicial district in which such person shall be found, to be proceeded against in due course of law." * * *

I enclose herewith copies of Executive proclamations dated respectively April 26, 1879, and February 12, 1880, hereinbefore referred to.

The resolution of the Senate is herewith returned, and a copy of this report is enclosed.

Very respectfully, your obdt. servt.,

H. PRICE,
Commissioner.

842 (Indorsed:) Commr. Indian Affrs., January 26, 1885. Returns Senate resolution Jany. 22, 1885, calling for information in regard to lands ceded by Creeks and Seminoles in Ind. Ty. and measures taken to expel persons attempting settlement, and reports thereon. 9 enclosures (map). Let. to the President. Jan. 26, '85.

843 DEPARTMENT OF THE INTERIOR,
Washington, February 15, 1898.

JOHN RANDOLPH, Esq.,
Assistant Clerk, Court of Claims.

SIR: In compliance with a call of the Court of Claims, dated the 4th instant, I transmit herewith the original letter addressed to this Department by the Commissioner of Indian Affairs, under date of January 26, 1885, in reply to Senate resolution of January 22, 1885, calling for information in regard to lands ceded by Creeks and Seminoles in the Indian Territory, and measures taken to expel persons attempting settlement.

Please return these papers to this Department when no longer required by the court.

Very respectfully,

THOS. RYAN,
Acting Secretary.

972, Ind. Div., '98. 1 inclosure. M. E. W.

844 (Indorsed:) 18932. The Choctaw Nation & the Chickasaw Nation, clmt., v. The United States & the Wichita and affiliated bands of Indians, defts. Reply of Interior Dept., accompanying letter. Filed Feb. 21, 1898. Court of Claims.

THE CHOCTAW NATION AND THE CHICKASAW Nation, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants.

HOWRY, J., delivered the opinion of the court:

The rights, legal and equitable, of the parties to this suit relate body of 743,257.19 acres of land lying between the ninety-eighth the one hundredth meridians of west longitude in what is known as Leased District of the Indian Territory. This leased district con 7,713,239 acres, and is a part of the country ceded to the United S by France in 1803 within the Louisiana purchase.

It is also a part of the country ceded by the United States to Choctaw Nation October 18, 1820. (7 Stat., 211.) The entire cessio described as follows:

"Beginning on the Arkansas River where the lower boundary lin the Cherokees strikes the same; thence up the Arkansas to the Cana Fork, and up the same to its source; thence due south to the Red Riv thence down the Red River to the mouth of Little River, which emp itself into the Red River on the north side; thence in a direct line to beginning."

The land in the leased district, if open to settlement as a part of public domain, has a fixed value of $1.25 per acre, thus aggregat between nine and ten millions of dollars. The petitioners, however, forty millions of dollars is a reasonable estimate of the value, and th is a statement in the record that a syndicate proposed to take the bod land at the Government price with the expectation of making thirty-f millions of dollars out of it, if given a good and sufficient title. T refers to all of the leased district, valued by a Senate committee at millions when the title was obtained in 1866, and more than forty milli of dollars in 1892. (Sen. Rep., 552, 1st sess. 52d Cong.) Under an graduating the price of public lands (in force in 1866) the price for e acre of the leased district might have been fixed as low as 12½ cents the United States had possessed the absolute title and had seen fit to pose of it. Inasmuch as lands adjoining those in controversy were val by the claimants and the United States at $1 per acre, it is fair to ass

that the lands herein mentioned were worth at least that s

846 (Art. 37, 14 Stats., 769.) These references to values are gi

because of their importance in considering the character of title to the lands in suit and the nature of the transaction which fo the large feature of this case.

Three parties allege title to the land. These tripartite claims pre some remarkable features, not alone for the amount and value of property, but because of the peculiar circumstances out of which controversy has arisen, and the history attending its progress; the nu ber and variety of the questions at issue and the differences of opin between the executive and legislative departments of the Governme from which unusual interest has come to be attached to the determinat of the case, now that the judiciary have undertaken to deal with it.

The petitioners are the Choctaw and Chickasaw nations of Indians, who are domestic, dependent nations, recognized as distinct political communities, with acknowledged territorial limits under various treaties with the United States. Under the guaranties of these treaties they occupy defined districts in the Indian Territory. The Choctaws number, according to the Report of the Commissioner of Indian Affairs for 1895, as many as 17,819 persons, and the Chickasaws number 6,000 souls. These figures include colored persons of African descent living with each tribe. By the census of 1890 there were 4,500 colored persons among the Choctaws, and 3,700 persons of the same color residing among the Chickasaws. These colored persons form a part of the inhabitants of those nations. (Census Bulletin of 1890, vol. 25.)

The defendants are the United States and the Wichita and affiliated bands of red men. The Wichitas in 1891 numbered 175 persons, but by later reports they do not exceed 153 souls. The affiliated bands are the Wacos, Towaconies, Caddos, Ionis, Keechies, and Delawares, with apparently a few Comanches. These affiliates in 1891 numbered about 885 persons, and are the remnants of tribes which either originally belonged in Louisiana or Texas, or wandered there a number of years ago. Since 1845 their history is substantially the same as that of the Wichitas, whose wanderings they have shared, and with whom they have made various more or less temporary settlements, and along with whom they were placed on the present Wichita Reservation in 1868. (Rep. Comr. Ind. Affs., Vol. I, 352; 1892, p. 386; 1893, p. 702; 1894, p. 576.)

The case arises out of an agreement entered into between the United States and the defendant Indians, June 4, 1891, at Anadarko, in the Indian Territory, under which the Wichita and affiliated bands ceded and relinquished to the United States all their claim, title, and interest in and to a certain tract of country within the leased district mentioned, and the United States stipulated to allot out of said tract lands in severalty to the said Indians.

The agreement also provided for opening the residue of the lands to white settlement.

The premises are described in the first article of the agreement as follows:

"Commencing at the point in the middle of the main channel of the Washita River where the ninety-eighth meridian of west longitude crosses the same; thence up the middle of the main channel of said river to the line of 98° 40′ west longitude; thence on said line of 98° 40′ due north to the middle of the channel of the main Canadian River; thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian; thence due south to the place of beginning."

847 When the agreement was promulgated the Choctaw and Chickasaw nations claimed that notwithstanding an alleged cession of the land by them to the United States the land was held in trust by the United States for them. The Wichitas and affiliated bands denied this claim and asserted an exclusive interest in themselves. The Executive Department of the Government also denied the claim of the Choctaws and Chickasaws. The provisions of the agreement were subsequently embodied in the following language in an act approved March 2, 1895, to wit:

"(a) Said agreement of June 4, 1891, is, by said act of March 2, 189
"accepted, ratified, and confirmed," as provided in said act.

"(b) There should be allotted to each and every member of the Wichi
and affiliated bands of Indians in the Indian Territory, native an
adopted, 160 acres of land, one-half thereof to be allotted in grazin
lands; the allotments to be selected within ninety days from the ratifi
tion by Congress of said agreement of June 4, 1891; the titles to th
land taken under such allotments to be held in trust for twenty-fiv
years, in the manner and to the extent provided for in the act of Congre
approved February 8, 1887. (24 Stats., 388.)

"(c) Whenever the lands acquired under said agreement of June
1891, shall, by operation of law or proclamation of the President, b
open to settlement, they shall be disposed of under the general provisio
of the homestead and town-site laws of the United States, provided tha
in addition to the land-office fees prescribed by the statute, the entryma
shall pay $1.25 an acre for the land entered at the time of submittin
final proof; and that all such entries, where the entryman has reside
upon and improved the land by him entered, in good faith, for a perio
of fourteen months, may be commuted to cash upon the payment of $1.2
per acre. Sections 16 and 36 and 13 and 33 in each township shall n
be subject to entry, but reserved—sections 16 and 36 for the use of co
mon schools, and sections 13 and 33 for university, agricultural colleg
normal school, and public buildings of the Territory and future State
Oklahoma.

"(d) As fast as the lands open for settlement under the act are sol
the money received from such sales shall be deposited in the Treasur
subject to the judgment of the court in the suit provided for in said a
less a reservation of not exceeding $15,000 for a designated purpose."

The petition alleges that the claimants are Indian tribes recognize
and dealt with as such according to the policies which the Governmen
has pursued in regard to the rights of such tribes, and that, at and pri
to October 18, 1820, the Choctaw Nation of Indians was the possesso
of certain lands east of the Mississippi River in the States of Mississip
and Alabama, which, by the first article of a treaty of that date betwe
the United States and the said nation, they ceded to the United State
and in consideration of said cession, and in part satisfaction therefor, th
United States ceded to the Choctaw Nation the tract of country describ
in the second article of said treaty, including, among other lands, thos
described in the petition. By the fourth article of said treaty the Unite
States stipulated that the boundaries of said cession to the Choctaw
should remain without alteration until the period at which said natio
should become so civilized and enlightened as to be made citizens of th
United States, and that Congress should lay out a limited portion o
parcel of such land for the benefit of each family or individual in th
nation (7 Stats., 211).

That the treaty of 1866 was agreed to by the petitioners and thei
representatives on the faith of the assurances that said lands were bein
acquired by the United States for the special and specific purpose of set
tling Indians thereon, and upon no other trust or purpose; and that th
cession in article three was subject to the said trust and condition, an
subject to the reservation and equity in favor of claimants that if sai

lands embraced by said cession should cease to be occupied by
848 Indian tribes and become divested of said trust and part of the absolute public domain of the United States open to occupation and entry under the land laws thereof, then the equity of the claimants should attach; that claimants have during the years since then failed to make any effectual objections to said treaty because of their then and continuing belief that said equity was in substance secured to the claimants by the provisions of said treaty as made; that the repudiation of said equity and trust in favor of claimants would operate as a fraud against them.

Claimants further show that the affiliated bands are fractions of certain ancient tribes; that the Wichita and affiliated bands have no right to or interest in the proceeds of the disposition and sale of said lands; that as between the United States and claimants, by reason of treaty obligations, it is beyond the competency of the United States, as against the grants and provisions of said treaties, to grant unto the Wichita and affiliated bands any title or interest in the lands in controversy or in the proceeds thereof, except the right of occupancy contemplated by the fifth proposition submitted to the Indians for their consideration in the negotiations which resulted in the treaty of 1866.

The prayer of the bill is that the court will pass its decree in favor of the claimants, decreeing that they are in law and equity entitled to the proceeds of the sale of all lands here in controversy (as to which proceeds it is provided in the said act that the same shall be deposited in the Treasury subject to the judgment of the court in this suit), and also are entitled to the just and full value of all lands which shall be allotted and reserved under the provisions of the said act and of the agreement which by said act is accepted, ratified, and confirmed, as therein provided, as such value shall be ascertained under an accounting made under the order and direction of this court.

The answer of the defendant Indians denies that the United States legally ceded the lands described in the petition to the Choctaw Nation, for the reason, as the defendants aver, that the United States possessed no title to the same, the aboriginal title of the Wichita defendants not having been extinguished at the time of the cession. They deny that the Quapaw tribe, from whom the United States derived title, possessed or that the United States received from that tribe any title to the lands west of the extreme eastern portion of what is now the Indian Territory, the said Quapaw Indians never having occupied said lands, being settlers of comparatively recent date upon the portion of the said cession contained in the present State of Arkansas, whither they had come from their former habitat east of the Mississippi.

That the United States had no authority of law to convey by patent or otherwise the lands which attempted to convey to the Choctaw Nation the title stipulated for in the second article of the treaty of September 27, 1830, because the Indian title had not been extinguished when the United States attempted to make the said conveyance.

The defendant Indians deny that the purchase of the lands involved in this suit was made subject to the trust and for the purpose of setting apart the lands embraced in said cession for the friendly tribes then in Kansas and elsewhere, except in so far as by the language used in said

treaty it was announced as the policy of the Government and understo
by the petitioners to cancel any shadow of title on their part
849 and to said lands that the same might be employed fully a
wholly by these defendants and other friendly tribes of India
to whom the Government had theretofore, or subsequently might, righ
fully grant it, after extinguishing the Indian title as required by law.

Specific grounds for the claims of the defendant Indians to the la
are set forth in the answer, as follows: That the pristine habitats of t
defendant Indians (except the Delawares) were in Louisiana, Arkans
Texas, Indian Territory, and Oklahoma. The similarity of the langua
spoken by them has led ethnologists to class them together as the Cadd
lingual family. The Siouan family, with the Quapaws as its southe
representative, lived northeast, the boundary between the two famili
following the watershed between the Red and Arkansas River system
The Caddo tribe occupied the eastern portion of Texas and weste
Arkansas and Louisiana. By a treaty with the United States made
1835 (7 Stats., 470), which, by reference, is made a part of the answe
the Caddo tribe ceded to the United States what are now Miller Count
Ark., and essentially, Caddo Parish, La., and agreed to leave the Unit
States forever. They retired into Texas, not then a portion of the Unit
States, and were residing there when that Republic was annexed to t
Union. Their right to be there was recognized by the United States
the treaty of 1846, made with the Caddos and other Indians (9 Stat
844), which treaty, by reference, is made a part of the answer, where
the signatory tribes were declared to be under the protection of t
United States.

About one-half of the Caddos remained in northern Texas until 187
when they were brought into the Indian Territory under an agreeme
made in that year at Fort Arbuckle. The other half of the tribe, on t
breaking out of the Mexican war, went to live on Caddo Creek, in th
Choctaw Nation, where they remained until moved, with the others,
their present location, in 1859.

It is further alleged that the Wichita tribe have ever lived along th
Red River, their habitat for more than 150 years having been west an
south of the Washita River, and hence west to the one hundredth degr
of west longitude.

That on August 24, 1835, the United States entered into a treaty wit
the Comanches and Wichitas in which the right claimed by them w
fully recognized by all the signatories, which treaty, by reference, is mad
a part of the answer (7 Stats., 474).

The Wichita and affiliated bands of Indians pray:

(1) That the petition of the claimants herein may be dismissed.

(2) That this court will decree that these defendants, in law and i
equity, are entitled to all the proceeds of the sale of all the lands at issu
and pass a decree that from time to time, as the said sales are made an
the proceeds thereof deposited in the Treasury, as provided by the act o
March 2, 1895, the same may be paid to these defendants.

(3) And for such other and further relief as shall seem proper.

The answer of the United States admits the allegations contained i
the first nine sections of the petition except as to the last paragraph o
the ninth section, which allegation is denied. The allegations containe

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in the last ten sections of the petition are denied except as to the first two paragraphs of the nineteenth section.

870 The allegations contained in the answer of the defendant Indians are denied in so far as they assert that the defendant Indians, or any of them, had any right of occupancy within the district between Canadian and Red rivers and the ninety-eighth and one hundredth meridians of west longitude prior to 1859, and in so far as they assert that the said Indians were promised or given in 1859 more than 155,240 acres within the said district, and in so far as they assert that the agreement of October 19, 1872, was executed without authority and under duress.

The Attorney-General prays as follows:

1. That the petition of the claimants be dismissed.

2. That the court will decree that the Wichita and affiliated bands of Indians are entitled to so much land in the present Wichita Reservation as may be allotted to them under Article IV of the agreement of June 4, 1891.

3. That no decree be made in favor of the Wichita and affiliated bands of Indians for the proceeds of the sales of unallotted or surplus lands in the said Wichita Reservation, unless it shall be also decreed that the said Wichita and affiliated bands of Indians shall execute to the United States a release and quitclaim of all right, title, interest, and claim of any nature whatsoever in, to, or for any lands outside of the limits of the said Wichita Reservation.

4. That the court will decree that unless such release and quitclaim be executed as aforesaid, the proceeds of the sales of unallotted or surplus lands in the said Wichita Reservation shall be and remain the exclusive property of the United States.

Departing from the usual practice of the court, we have made no findings of ultimate fact. The case is one of equity jurisdiction, and the rules relating to findings of fact in the nature of a special verdict have no application where on appeal the facts and the law may be reviewed as in equity cases appealed from courts of the United States other than the Court of Claims.

In a claim where the jurisdiction was conferred on this court to determine the amount, if any, justly due from the United States to the Western Cherokees, findings of ultimate fact were held to be not in the province of this court because of the intention of the jurisdictional act to have adjusted the rights, legal and equitable, of both the parties.

Commenting upon this case on appeal, Mr. Chief Justice Fuller, for the Supreme Court, said that the case would be considered and determined there upon an examination of the entire evidence, because the language of the act of Congress was manifestly used with the intention that equity powers should be exercised in the disposition of the case by this court. (United States v. Old Settlers, 148 U. S. R., 464.)

The present suit comes under the rule stated by the foregoing authority as well as by that laid down in Harvey v. The United States (105 U. S. R., 671).

An analysis of the evidence shows that the claims of the respective parties are rested—

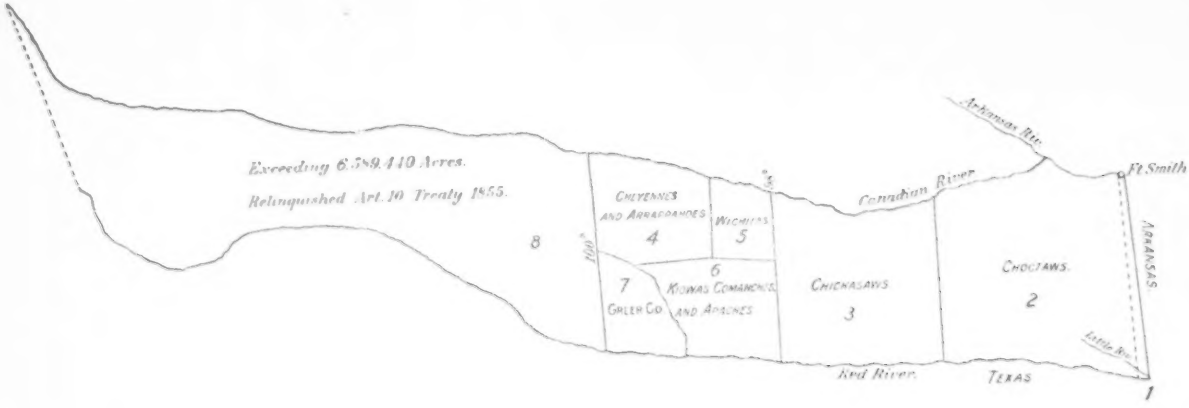
(1) As to the Choctaw and Chickasaw nations: Upon contracts and rights growing out of treaty agreements with the United States.

(2) As to the Wichita Indians: (a) Upon rights of ancient possession commencing before the Louisiana purchase and extending to the
851 use of the land as aboriginal occupants down to and past the time of the treaty between the United States and the Quapaw tribe in 1818; (b) upon the recognition alleged to be contained in the treaty of 1835 between the said Wichitas and the United States confirmatory of their first possession; (c) upon their removal from Texas in 1859 to the leased lands; and (d) upon rights acquired to the lands under an alleged agreement in 1872 with the Commissioner of Indian Affairs on behalf of the United States, and which agreement was never formally ratified. This claim applies not only to the lands in suit, but to all of the leased district.

(3) As to the affiliated bands: Upon the interest acquired in the Wichita title of occupancy and whatever other rights they had acquired July 1, 1859, under an agreement at Fort Arbuckle, in the Chickasaw country.

(4) As to the United States: Upon the ninth article of the treaty of 1855 and the third article of the treaty of April 28, 1866, entered into between the claimant nations and the United States, under which it is claimed the United States reacquired whatever rights the Choctaw Nation had obtained under preceding treaty stipulations from the United States.

Following is a diagram of the land in dispute, and of the land incidentally involved in the controversy, including also the land originally granted by treaty to the Choctaws; then granted to Spain by the United States and relinquished as to any claim on it by the Choctaws in 1855



852 Tracts 1 to 8, inclusive. Claimed to have been conveyed to Choctaws, 1820, by U. S. Claim admitted except as to tract No. 8.
Tract 8. Choctaw land ceded to Spain by U. S. without Choctaw consent, 1821.
Tract 1. Re-ceded to U. S. by Choctaws 1825, now in the State of Arkansas.
Tract 3. Set apart for Chickasaws by Choctaws, 1837. (4,650,935 acres.)
Tract 8. Relinquished to U. S. by Choctaws, 1855. (Exceeds 6,589,440 acres.)
Tracts 4, 5, 6, and 7. Compose land leased to U. S. by Choctaws and Chickasaws in 1855. Choctaws and Chickasaws retaining full right of settlement thereon.
Tracts 4, 5, 6, and 7. Ceded to U. S. in trust (as claimed) by and for other Indians. (Art. 3, 1866.) (7,713,239 acres.)
Tract 4. Assigned to Cheyennes and Arapahoes by Ex. order Aug. 10, 1869, and freed from trust limitation by purchase March 3, 1891. (2,489,159 acres.)
Tract 5. Lands occupied by Wichitas by Executive permission, and now in litigation in Court of Claims. (Case No. 18832.) (743,610.)
Tract 6. Lands "set apart" for use of Kiowas, Comanches, and Apaches, Oct. 21, 1867. Art. 2. (2,968,893 acres.)
Tract 7. Greer County. A portion of leased district not assigned to Indians. (1,511,958 acres.)

853 Inasmuch as, by the contentions of some of the parties, a large part of this case is made to rest upon rights resulting from aboriginal occupation of the country in dispute, it is well to consider briefly the nature of Indian tenures and determine whether the occupancy claims of those now asserting the same have anything in them to supersede the titles acquired by those who contend that all aboriginal claims have been extinguished.

Under the agreement which originated the suit the defendant Indians reserved the right to prefer against the Government any and every claim they might believe they had, save and except any claim to the tract of country described in the first article of that agreement. (Art. IV, Agreement of 1891.) The act of 1895, ratifying the agreement of 1891 and conferring the jurisdiction, also provided for the claims of all the parties to be fully considered and determined, and under this the defendant Indians assert that the Quapaws, from whom the United States obtained an Indian title of occupation, possessed no such title, but allege the Wichitas did, in which the affiliate tribes came ultimately to share. Thus, this claim of the defendant Indians underlies everything else in the case if, being sustained, it is made to operate on the land itself and not merely treated as a claim for compensation for land appropriated by the Government and ceded to others. The matter, then, of the prior occupation of the tract of country at issue and the claims founded thereon by alleged recognition of this occupation will first be considered.

Rights following discovery of lands in this country were first treated by European nations above the possessory claims of the aborigines. Vattel declared that the unsettled habitations of Indians were such they could not be legal possessors of the soil. The discoverers, however, came to concede the rights of occupants, and the Indians in possession were permitted to retain their original natural rights as the undisputed possessors of the soil, subject to such conditions as were imposed by those making the discoveries. Discovery gave title to the country and power to grant the soil, subject to the Indian right of occupancy. But the Indians were not permitted to grant title to the lands occupied by them, their right being merely that of occupancy and not of ownership.

Early in our history the character of Indian holding was defined substantially as outlined. The United States "unequivocally acceded" to the broad rule by which its civilized inhabitants held the country, and it was not doubted that either the General Government or the several States acquired a clear title to all the lands within the boundary lines described in the treaty of peace between England and the United States, subject only to the Indian right of occupancy; and the exclusive power to extinguish the right was thus vested in that Government which might constitutionally exercise it. (Johnson v. McIntosh, 8 Wheat., 543.)

The general principles announced were followed by cases which declared that Indian possession or occupation must be respected until they chose to make a cession of their lands to the Government, or made an authorized sale to individuals or abandoned the possession. Their occupation was considered with reference to their habits and modes of life, and consequently their hunting grounds were declared to be as much in their actual possession as the cleared fields of the whites. When their

rights became extinct as the lands were abandoned or sold, the grants could be made by the Government unincumbered of the right of occupancy. (Mitchell v. United States, 9 Pet., 711–746; rk v. Smith, 13 Pet., 195.)

The Choctaw claimants allege that these decisions apply to the aborigi- rights of occupancy existing in Indians generally, without reference those rights existing in one tribe independently of the right of any er tribe to the same tract of country; and, aside from this, they say e claim of the defendant Indians to the land in dispute can in no way nflict with that of the Choctaws and Chickasaws to the proceeds of the les provided for in the act of March 2, 1895, so long as tribal organi- tion should exist in the particular tribe in possession or until they ould sell.

The consequences of an abandonment of the occupancy would appear have been the subject of consideration when the court, in Cherokee ation v. Georgia (5 Pet., 1, 17), said, in referring to the Indian occupa- on: "They occupy a territory to which we assert a title independent of eir will, which must take effect in point of possession when their right f possession ceases." And again, in United States v. Cook (19 Wall., 91, 593): "The possession, when abandoned by the Indians, attaches self to the fee without further grant."

After these announcements another case referring to the power of the Government over the Indian title was considered by the Supreme Court, nd the rule declared in United States v. Cook was quoted with approval. Said Mr. Justice Field: "It is to be presumed the United States would e governed by such considerations of justice as would control a Chris- ian people in their treatment of an ignorant and dependent race; * * * the propriety or justice of their action toward the Indians with respect to their lands is a question of governmental policy;" but the power of the United States to transfer the fee was never denied. Beecher v. Wetherby, 95 U. S. R., 517–526.)

More or less cloudiness respecting all titles based on Indian occupa- tion no doubt existed in our early dealings with the tribes, and the uncer- tainty of occupancy claims must have been greatly augmented as the tribe asserting a possessory right was small in number or roving in habit. But the principles adopted by all departments of the Government in the premises relate to the aboriginal rights of the separate tribes as they were asserted and ascertained. Differences of language, custom, and tradition generally separated the different bands, and the occupation of particular country marked these differences of speech and habit and largely gov- erned those who dealt with the tribes in fixing the bounds of their respective habitations.

Boundaries may have been in numerous instances poorly defined, but some general boundary lines must have existed to the places of abode or hunting grounds claimed to justify any specific claim of title by virtue of occupation.

The history of the Indian race shows that some of the tribes had recog- nized places of abode with defined hunting grounds, while other tribes had none and made no pretenses to ownership of territory at all. Some of the warlike bands depredated extensively, and were not infrequently the scourge of the whites, but of the other tribes as well, while others

wandered from place to place with no apparent desire for permanent homes and with no special aim to gratify but their nomadic instincts.

855 In all cases there must have been actual use or occupancy and not mere constructive or desultory possession; some mastery of a tribe over the soil to the exclusion of others, or the joint possession of two or more tribes such as gave to each something of a fixed habitation or use of the land as hunting ground to establish a title by occupancy.

Occupation in its usual sense is where a person exercises physical control over land. (2 Rapalje and Lawrence, Law Dict., 893.)

The absolute nature of the political and territorial rights of Indians was stated by a learned commentator to have been denied by our colonial ancestors only so far as Indian nations had formed themselves into regular organized governments, within reasonable and definite limits, necessary for the hunter state. (3 Kent's Com., 387.)

This states the case restrictively in view of our actual dealings with tribes claiming as occupants of territory, but there must have been in all cases tribal organizations at least and subjection of land to the will and control to form the basis of any valid claim of occupation by virtue of more ancient discovery and use on the part of Indians claiming as occupants.

The first question, then, is whether any of the Indian defendants actually occupied the land in suit, in the sense of an Indian occupation, at the time of the Quapaw cession to the United States in 1818. Except as any occupation at other times may throw light upon their claim of possession as of the time of that cession, it does not become material to inquire whether any of the defendant tribes were in possession or not, but in this view the entire matter of possession will be examined.

The Wichitas claim an unextinguished title to the whole reservation in suit, besides the right of permanent settlement thereon under the agreement which placed them there in 1859. These double claims are not consistent, and so much in conflict, apparently, they can not both stand. Rights by virtue of prior occupation, if established with all the consequences claimed for them, would supersede the agreement which conferred privileges upon the other bands along with the Wichitas independent of occupancy claims of one of the tribes going upon the land under the agreement. Having acquiesced, when placed upon the land, to the admission of the affiliates to what is now asserted to be exclusive territory, the Wichitas can not have a decree by which the United States must by any possibility make other provision for the affiliated bands, except upon the clearest evidence of original right, and unless the circumstances originating the later right are not such as to operate upon the Wichitas as an estoppel.

If the Wichitas are entitled to the premises, by virtue of prior occupation, the agreement which permanently settled them there must of course be held ineffective and insufficient to meet the full equities of their case.

Resting their claim of prior occupation upon traditions and the writings of travelers and historians, it can not be denied that some things have been shown well calculated to throw a cloud not only upon the extent of the Quapaw occupation at the time of that cession to the United States, but also to leave room for doubt as to who really did

ccupy the disputed territory. It remains to be seen whether the doubts attending the claim now asserted have been removed.

536 The nature and necessity of the case, and the evident intent of the jurisdictional act to have the court consider all the testimony necessary to aid in the determination of the case, has left us no alternative but to carefully examine everything offered; and where doubts have arisen respecting the relevancy or competency of evidence we have not hesitated to give the parties the benefit of the doubt in the spirit suggested by the broad and liberal terms of the statute.

Title by occupation is asserted to the Great Prairie west of the Cross Timbers to the western limits of the United States. This covers an immense scope of country in Texas and all the territory between the Red River on the south and the Canadian and its North Fork, or the Cimarron and the Arkansas on the north, as well as the country at 95° on the east to the 100th meridian on the west. Not only the reservation, but the entire leased district is repudiated as a geographical entity by the Wichitas, but that district is used by them as a convenient form of designating, not their pristine home, but only a portion of it. As they deny the validity of its original setting apart, they say its boundaries should not be used as specially designating their early home.

The Cross Timbers are a growth of small timber, two long narrow strips between the ninety-sixth and ninety-ninth meridians, extending parallel to each other from the Indian Territory southward to central Texas. (33 Amer. Jour. of Science, 3d ser., 291.) High on the dividing ridge between Red River and the False Washita there is a range of hills, the southwestern portion of which extends to about the one hundredth degree of longitude. These are generally called the Wichita Mountains. South of the Canadian, a branch of the Cross Timbers projects off westward for 100 miles, then inclines northwest beyond the North Fork, and ultimately ceases in the great sandy plains. (Gregg's Commerce of the Prairies, 1842.) This woodland is from 5 to 30 miles wide, and from the Arkansas River runs in a southwesterly direction to the Brazos, some 400 miles. (Marcy's Rep., 1852.)

The country to which title is really asserted by the Wichitas is the whole of the Great Prairie, which includes the "Staked Plains," the general level of whose surface is broken only by the Wichita Mountains. These plains are bounded on the west by the mountains of New Mexico and Colorado, while to the north and south there are no natural boundaries nearer than the Arkansas and the Pecos. On the east the claim would cut into the country of the Creeks and Cherokees, as well as the claimants' country.

It is not within our province to determine claims beyond the immediate reservation in suit, but as this claim goes to the whole prairie, and the evidence to sustain an occupation is the same for all and nearly inseparable, we will examine the issues as presented.

The extent of the country claimed is not the only remarkable feature of the Wichita contention. They say they were a pastoral and peaceful people. We know they wandered from place to place with great frequency, and that even in the eighteenth century they were few in number. History does not attribute to them any strength and vigor as a tribe, or any characteristics denoting aggressiveness or prowess. It is

difficult to see how such a body of people should possess either the inclination or the ability to assert or maintain dominion over so
857 much country in the presence of so many more warlike tribes who, in great numbers, inhabited the same region and roamed over it to supply their wants by force where other means should fail.

That the archæology of the western prairie is associated with the history of the Wichita Indians is testimony of value in support of a claim by occupation by those asserting it, but this testimony with respect to the country in issue is impaired by the use of the same name in designating streams in other sections of country. The name Wichita, or Washita, applies to certain streams in Louisiana, Arkansas, Texas, and the Indian Territory alike. The Washita River of Arkansas and Louisiana was believed to rise near the source of the Arkansas. (Senex's map, 1710; Le Page du Pratz, vol. 1, p. 152, 1758.) It is inferable that the name Fausse Ouachita (False Washita), given on the early maps to the Washita River of the Indian Territory, grew out of the error disclosed by Senex's map. The value of the testimony is again impaired by the want of proof showing when the Wichita name was impressed upon the country and by whom. Wichita, in the State of Kansas, took its name from the temporary settlement of the tribe there during the war between the States. It does not appear whether white men named the Wichita Mountains or whether the Wichitas undertook to do so.

The word "Wichita" is said to be Osage for "moving about," "migrating." (Amer. Antiquarian, xiii, p. 251.) As a tribe the Wichitas were not savage and warlike like the Comanches and Kiowas, whose tendencies were generally asserted as occasion offered; nor yet gentle and passive as the Shawnees and Delawares, who had permanent homes as long as they could maintain them. The Wichita women cultivated the ground as opportunity and settlement at any one place long enough permitted, but the men, in their later history, had horses and hunted on the plains and roamed over the country much of the time. The tribe built round, grass-covered huts when stationary, tilling the soil, but changed their location every few years, and official reports leave but little room to doubt that for years before they were taken to the present reservation they were marauders and horse thieves. Wandering from place to place for subsistence, they can not be said, from the time they first came into notice until prevented from moving about, to be other than a nomadic people, and by their roving tendencies and the conditions as they existed before they were placed on their present reservation must their claim to any part of the Great Prairie be measured.

The Wichita tribe are called in their own language Kitikitish; by the Spaniards, Taovayase; by the French, Ouachita and Panis Piqués (tattooed Pawnees), and when used on maps and in reports, narratives, and histories the names Wichita, Witchita, Towiache, Tahawayase, Toweash, Toyash, Towish, Taoviase, Taouayache, Ouichita, Ouachita, Ouasita, Ousita, Wachita, Washetaw, and Panis Piques designate the same tribe or band.

In the classification of the Caddoan groups the tribe has a place, while to the Siouan lingual family ethnologists have assigned the Quapaw and Osage tribes. (Seventh Annual Rep. Bu. Eth.) This is contradictory of their Osage derivative, but we will not stop to discuss this, as the

858 Wichita synonym may have come from their enemies. The connection of the Wichitas with the Caddoan family is thought by their counsel to be a matter of considerable importance, but why it is so does not clearly appear. Even if the two bands were of common origin, we fail to see the bearing of this upon the Wichita claim to country two hundred miles above any known place of occupation of the Caddos nearest the leased district. The Caddos themselves never had any title to any part of the leased district or pretended that they ever had. It is admitted that they resided in the Brazos River country in Texas, whence they migrated from southwestern Arkansas, northwestern Louisiana, and northeastern Texas in the early part of the present century. There is nothing substantial to show that they ever saw the immediate country in dispute or that the Wichitas ever saw it until 1859. The fact that ethnologists have classed the Wichitas with the Caddos can not strengthen the claim of the former to the disputed territory merely because the country inhabited by the Caddoan family was separated from that occupied by the Siouan family. The evidence does not establish to our satisfaction that the boundary line of the Caddoan groups of Indians ran close to the Canadian west of the ninety-eighth meridian or included in the Caddo country all but a small portion of the leased district. That it is mere speculation to attempt to accurately fix this boundary line close to the Canadian west of the ninety-eighth meridian is found in the admission of the Wichitas that it is "an entirely possible line."

In 1682 the Wichitas do not seem to have been known to white men. History is silent and tradition gives no account of them before 1688. They are mentioned by Tonty, the Italian explorer, as being in that year along with the Natchitoches. This would put them in what is now known as the site of the town of Natchitoches, in the State of Louisiana. The early maps and authorities generally show the Natchitoches to have lived in Louisiana in the vicinity stated, and the village of the Wichitas is placed in that neighborhood by many maps of the eighteenth century.

Tonty does not state where the Quasitas actually dwelt, his narrative not fixing a precise location because of the incidental references to them. But he does speak of the chiefs of the Quasitas and Capichis meeting him, along with those of the Natchitoches, and he explicitly says that the three tribes constituted one people. (Discouvertes en Amérique, Paris, 1697, p. 319; Rélation de la Louisiane, Amsterdam, 1720, p. 196.)

Historians tell us that in 1700 or thereabouts the northern part of Louisiana contained a tribe of Indians called by the French "Ouichita," who gave their name to the river. In an account of a journey of St. Denys and Bienville in 1699 it appears that, after having proceeded to the village of the Wachita, where was found but five huts, it seemed to those travelers that the Indians of that name had mostly removed to the Natchitoches. (Martin's Hist. of Louisiana, 102.) It is admitted that the connection of the "Ouichita" with the Wichita is "undoubted," but insisted that about this time there was a severance of the tribe.

The time of this severance is conceded to be problematical, but thought those who represent that part now recognized as the survivors to be too ancient to become a matter of tradition. At all events, it is said that in 1700 the Wichitas moved to the village of the Taensas, on the Mississippi, where the parish of that name now is, and afterwards went west

859 among the Caddos, who occupied the country in the bend of the Red River, in Louisiana, Arkansas, and Texas; that the number of these Wichitas was small, having no tribal connection with the Indians of the same name living on the plains; that in 1719 there was a large village of Wichita and kindred Indians on one of the branches of the Arkansas River in the eastern portion of the Indian Territory and that in 1737 these same Indians, after having lived some years on the Canadian, moved to the southward.

Bienville's journal of a voyage from the Taensas (4 Margry, 432 et seq.) shows that at a certain place that explorer found Wichitas who had abandoned their village to go and live with the Taensas. The argument is that Bienville found but few Wichitas then leaving their Louisiana home forever. Le Page du Pratz, who wrote about 1758, states that the Ouachitas went westward, and Dunbar, who visited the Washita River in 1804, reported that the tribe of that name, formerly dwelling on its banks, was said to have gone "into the great plains to the westward." (Am. State Papers, Ind. Affs., vol. 1, p. 732; Jefferys's History of the French Dominions in North and South America, London, 1761, vol. 1, p. 165.) The removal mentioned by Du Pratz could not have been the same referred to by Bienville, there being nothing in his journal to sustain this argument. Bienville does not state how many Wichitas he met on their way to the Taensas country, nor that no other parties were on their way or had arrived. For aught that he says, there is no reason to suppose that Bienville met all of the tribe who were then in Louisiana, and still less reason for limiting their number. There may have been hundreds of them for anything that appears in his narative. It is reasonably certain that the migration referred to by him was not the same as that mentioned by Du Pratz.

The relation of La Harpe and the discovery by him of certain Indian nations situated in the West is also relied upon as historical evidence in support of this contention of early location of the Wichitas. (6 Margry, 249 et seq.) La Harpe says that he advanced to the mouth of the Ouachita River, 14 leagues from the Mississippi, and in his further explorations found on the Canadian, in 1719, certain Wichitas, who, according to the contention of counsel, must have separated from the Louisiana Wichitas some time before.

Counsel for the Wichitas say that there is no reference to a western migration of the Wichitas from Louisiana but of the handful who merged in the Nachitoches in 1700, and that in 1719 La Harpe met those of the same blood on the Cimarron.

It is reasonably certain that Bienville and Du Pratz do not refer to the same migration, and neither of them make any definite statement as to the numbers of the Wichitas. Neither of them suggest a merger in another tribe. According to La Harpe, the Touacaras (Towakonies) were the leading tribe on the Canadian (or, as counsel for the Wichitas suggest, the Cimarron), as he invariably refers to the village as that of the Touacaras, and states that the chief of that tribe was the most respected of all, enjoying certain special privileges which in a savage community would assuredly not have been granted except to a chief whose followers were numerous enough to compel respect and obedience. At the same time La Harpe states that the Teajas were the most numer-

ous nation. He further says that the chief of the Touacaras and
860 six other chiefs of nations met him, and he mentions seven distinct tribal names, counting the names Toayas, Quirasquiris, and Onsita as referring to one tribe. Thus, it appears, he met seven tribes in all, to wit: Tawakoni, Southern Comanche, Kiowa, Apache, Caddo, Waco, Adäi, and Wichita. Leaving out the Wichitas, every one of the other tribes belonged at that time in Texas, except the Caddos, who belonged in Louisiana, near the Texas border. The evidence does not show that any of the tribes remained long in or near the locality where La Harpe met them, or that they were in the course of the migration to Texas from some other point. It is probable that their stay, which was only during the summer season, lasted but a few seasons, after which they returned to the region where they properly belonged. If the Wichitas did not return to Louisiana and move westward along the Red River, but went southwestwardly from the Canadian to the Wichita Mountains and other parts of the leased district, there is no explanation as to what became of the other tribes or why they did not continue their association with the Wichitas in such a movement to the leased district.

It is again contended by the Wichitas that they were the same as the Panioussas mentioned in an anonymous memoir in Margry, and that they lived on the Upper Arkansas. This anonymous report is taken from the early French records, and it speaks of the nations who lived or who were established on the course of the Red River from the mouth to points within the knowledge of men, and includes one tribe called "Touacana" or Panioussas, and these last are placed near the river of the Otouys. The latter name is thought by counsel for the Wichitas to be synonymous with the Otoes, who were, according to the maps of that time, on the Upper Arkansas. Inasmuch as there was a tribe named Sotouys on the Lower Arkansas, near its mouth (written by De l'Isle "Sitouis," by La Harpe "Zautouys," and by Ross and D'Anville "Sotouis"), it is more probable than otherwise that the location of the tribe described as Touacanna, or Panioussas, was not near the Otoes.

We have examined the contentions relating to the origin of the Wichitas, their early traditions, associations, and movements, not alone for the interesting discussion which goes back to the twilight of Indian history west of the Mississippi, but for the earnest argument for the Wichitas in support of their claim, and the information which we have supposed might lead to the establishment of something certain for them. But for anything that appears on the maps or in the statements of the early explorers we have nothing sufficiently definite or certain to lead to the conclusion that the Wichitas had such an early aboriginal claim as they state. Close examination of the early French and Spanish records, the statements of travelers, and the accounts of historians suggest the most reasonable conclusion to be that the French found the Wichitas originally in Louisiana; that for a short time the tribe, or a portion of it, passed the summer season on the Canadian in company with portions of other southern tribes, but that ultimately they were driven westward to the Red River by the Chickasaws, after which time they were found among the Indians whom the Spaniards met and dealt with in Texas. Their descendants are now asserting the title.

There is less of conjecture in this conclusion than in any other, and it is really not inconsistent with the opinions which the Wichitas
861 themselves have on this branch of their case. They admit an early habitation in Louisiana, and do not satisfactorily prove such a severance of the tribe and departure of a part of the land from the country south of Red River into the country of which the leased district forms a part as to enable us to say with any degree of accuracy or precision that there was an actual permanent division, or that any of them ever laid claim or had a right to claim that country which forms the subject-matter of this suit. The learned counsel for these respondents, recognizing this, say they are "content for the purposes of this cause to base possessory title on the history of the Wichitas from the middle of the eighteenth century." (Rec., 491.) If they are content to do so, then the court is also content to reject such statements as explorers have offered concerning the location of the Wichitas outside of what is now Louisiana and Texas, since they are at best, as they appear to us, conjectural for the most part and too indefinite to found upon them the substantial rights claimed upon their authority.

The following is a summary of evidence upon which, for the purposes of this case, the Wichita claim of occupancy to the "Great Prairie west of the Cross Timbers to the western limits of the United States" (which includes the leased district) is mainly rested, to wit:

In 1759 the account of Parilla's defeat shows their residence at "San Teodoro." (Record, 485 and 601.)

This name of San Teodoro was given, in 1778, to one of two Wichita villages visited by Mesieres, one each side of Red River, west of the Cross Timbers. (Rec., 485–6 and 492.)

In 1788 Fragoso, in a journey down Red River, visited and remained six days at the Wichita villages just west of the Cross Timbers. (Rec., 486 and 603.)

In 1805 Sibley reported two villages of the Wichitas on the south bank of Red River, 340 miles in a direct line west from Natchitoches, 30 miles by land west of the False Washita. (Rec., 486.)

In 1805 Dublanc, governor of Natchitoches, reports (in Robin, 1807) that the Wichitas occupied two villages, one each side of Red River, 80 leagues above the Caddos, who were in northwestern Louisiana. (Rec., 1042 and 1339.)

The statement accompanying the letter of J. C. Carr (which, without the statement, is printed in the Record at page 1039), dated at Natchitoches, in 1819, and purporting to include the Indians of Texas, does not include the Wichitas.

The Melish map of 1818 gives a Wichita village south of Red River, below the mouth of the Blue River. Long's map of 1823 shows a Wichita village north of Red River, at the mouth of the Blue, the note stating that it was abandoned in 1810. Melish got his information from Darby. (Rec., 600.) Darby, in his work on Louisiana, at pages 28-9 gives the Wichita villages east of the Blue, but on page 51 says that the Washita flows into the Red 70 miles above the Blue and a short distance below the Wichita towns.

The statement of Uts-tuts-kins, then a child, states that the villages on Red River were deserted for one at the mouth of Cache Creek, and

that there they had smallpox, which we know was in 1816. (Rec., 1340, and Senate Ex. Doc.

862 Morse's report (Census, 1890, Indians, p. 11) states that the Wichitas lived on Red River, 1,200 miles above its mouth, in 1822.

In 1830 A. P. Chotean reported that there was a Wichita village 250 miles from Fort Gibson. (Rec., 1086 and 1342.)

In 1832 Albert Pike was informed that the Wichitas had always lived in the country around the Wichita Mountains. (Senate Ex. Doc. 13, supra, p. 29.)

In 1834 Colonel Dodge visited the Wichita village on the North Fork of Red River, near the mouths of Elm Fork and Elk Creek and Mount Webster. He was informed that the tribe formerly lived farther south, and that their oldest men were born there. (Rec., 1087 and 1343.)

The report of the Texas Boundary Commission (pp. 64 and 67) gives a statement of a Waco chief, Shot Arm, who was an old man in 1858, that he was born at a village on the North Fork of Red River, at Mount Webster. (Rec., 487.)

Catlin's map of Indian localities in 1833 shows a Waco village on one side of Red River and a Wichita village on the other. (Census, 1890, volume on Indians, p. 45.)

Wichita Indians informed James Mooney that they moved from North Fork to Fort Sill in the summer of 1834. (Rec., U. S. v. Tex., 676.)

Xiastor, a Wichita Indian, claims to have been born at Fort Sill in 1837. (Rec., 610.)

General Bee visited the Wichita village on Cache Creek, near Fort Sill, in 1843. (Rec., 503.)

Captain Marcy, in 1849, reported that the Wichitas lived between the Red and Washita rivers. (Rec., 1331.)

In 1852 Captain Marcy was at the remains of the Wichita village at Fort Sill, which had been deserted two years before because, as Albert Pike tells us, of inundation and attacks of hostile Indians. (Rec., 503, 1097, and 1341.)

In 1852 Captain Marcy found the Wichitas living at Rush Springs, west of the Cross Timbers, and at the head of Rush Creek. Both of the above locations are shown on the map accompanying Marcy's report. (Rec., 269 and 604.)

In 1858 the Wichitas deserted the village at Rush Springs and took refuge at Fort Arbuckle. (Rec., 504.)

In 1852 Marcy reported that the Wichitas were entitled to the country around the Wichita Mountains by the right of occupancy and possession. (Rec., 604.)

In 1853 Horace Capron reported that the Wichitas were entitled to the country north to the Canadian and around the Wichita Mountains, it being originally their country, they never having relinquished the same. (Rec., 1098 and 1343.)

In 1859 Rector reported that the Wichitas had lived in the country north to the Canadian River from a time beyond anyone's memory. (Rec., 607.)

Beginning with the account of an expedition in 1759, it appears that Parilla's defeat was at a place which shows the residence of the Wichitas

to have been at San Teodoro, one of the Towaiache villages on the main Red River, west of the Cross Timbers. The statement respecting the expedition and its results is taken from Hubert H. Bancroft's
863 work (vol. 5), and is quoted in the record of the case of United States v. Texas (162 U. S., 733), from which it substantially appears that plans for a campaign were made by a conference of officers at Bexar in January, 1759. An army of 500 soldiers and volunteers, with a large force of Apache auxiliaries, started in August under the command of Parilla. After marching some 150 leagues they surprised a rancheria, killing 55 of the foe and making many captives. They then advanced against the towns of the Taovaiases and, in the region of what was later called San Teodoro, found 6,000 Indians, of different tribes, in a strongly fortified position, many of them armed with muskets, and displaying a French flag. The savages did not wait to be attacked, but made a sortie in force and the Spaniards fled in a panic. This affair occurred south of the Red River, thus showing that Taovaiases were located, not north, but south of the Red River in 1759. If the Wichitas were located where they were when Mesierres found them in 1778, their location in 1759 was east of the ninety-eighth meridian. Hence, even if the Wichitas had been north of the Red River, and not south of it, they would not have been in the leased district.

A Spanish officer named De Messieres made a report in 1778, which also appears in the record in United States v. Texas (890–891), in which he substantially stated that from the Brazos River, where the Tuacans dwelt, to the stream that waters the Taoviase village there was seen on the right a forest justly called by the natives the "Big Forest" (Cross Timbers), and that the Taoviase nation was divided into two villages, one situated north of the Rio Bermejo (Red River), or River of Nachitoches, and the other opposite; the former village was composed of 57 houses and the latter of 123 houses. There is nothing in the entire statement to show that the Taoviases occupied any land north of the river beyond the place of the few houses mentioned, and nothing tending to show that they occupied or claimed any part of the leased district. More than three-fourths of the tribe was on the south bank of the river. The double village was east of the ninety-eighth meridian, and that meridian constitutes the eastern boundary of the leased district. The Cross Timbers reach the Red River at 97° 15′ west longitude, as shown by the maps of Austin, 1830; Hunt and Randel, 1839; Kennedy, 1841, and Tanner, 1846. South of the Red River their western border is east of 97° 30′.

It does not appear that De Mesieres traveled north of the Red River at all, and on the whole statement, with other evidence, we conclude that the proofs relating to the Parilla expedition and De Mesieres' visit locate the Wichitas east of the ninety-eighth meridian and not in the Wichita Mountains. The ninety-eighth meridian being the boundary of the leased district on the east, the Wichitas could not have been in the leased district.

The narrative of another expedition about that time (1778) shows that Fragoso started eastward from Santa Fé June 24, 1788. According to his account, he left the Wichita village July 26 and traveled that day 7 leagues in eleven hours. On the next day he traveled twelve hours, but

does not state the distance made. On the 28th, after traveling 4 leagues, he reached the Cross Timbers. The average hourly distance made during the twenty-two days prior to his arrival at the Wichita village, 864 for which the distances are stated, was four-fifths of a mile. This would make the distance from the Wichita village to the Cross Timbers about 21 leagues, or 63 miles. From the Wichita village to the Cross Timbers by the course of Fragoso's journey the village would appear to be east of the ninety-eighth meridian. The course of the Cross Timbers south of the river is southeast. The more directly south Fragoso went from the Wichita village to the Cross Timbers the nearer was that village to the meridian of the Cross Timbers. The contention that Fragoso did not travel along the Red River all the distance from the Wichita village to the Cross Timbers, but traveled southward a part of the time, finds its answer in the statement that the more southerly his course during this journey of two and one-half days the nearer was the Wichita village to the meridian of 97° 15′ and the farther was that village east of the meridian of 98°, which formed the eastern boundary of the leased district. And it does not appear that Fragoso traveled along the river the whole 63 miles of his journey, as the river in that region often flows in a southerly and sometimes in a southwesterly direction.

In his report to the Secretary of War (Amer. State Papers, vol. 1, Ind. Affairs, 721 et seq.), Dr. John Sibley said in 1805 that the Panis or Towiaches lived on the south bank of the Red River, by the course of the river upward of 800 miles above Nachitoches, and by land about 340 miles; that they had two towns near together, the lower town, where the chief lived, being called Witcheta and the other Towa-a-hach. From the mouth of this river, known as the False Washita, through the prairie to the main branch (Canadian) of the Arkensa was a three days' journey, some 60 or 70 miles in a straight line. From this mouth of the river to the Panis or Towiache towns the distance was about 30 miles by land and double that distance by water, where the river is nearly a mile wide. The mouth of the False Washita is about 4 miles west of the meridian of 96° 30′, according to maps of the Land Office of 1891 and 1897 and by the Indian Office map of 1896. According to Sibley, then, the Wichitas, Towiaches, and Tawakonies were south of the Red River in Texas in 1805, some fifty-odd miles east of the ninety-eighth meridian.

According to the statement made by Robin, 1807 (vol. 3, p. 3), concerning the report of Governor Dublanc, the distance from the Natchitoches (then located near the present site of the town of that name in Louisiana) to the villages of the Taouayaches and Ouiteitas was 185 leagues by water. The distance from Natchitoches by land to the sharp bend of the Red River in the State of Arkansas is in a straight line 132 miles. The distance in a right line from that bend to the ninety-seventh meridian is 181 miles. If the distance by this crooked river from the Natchitoches to the sharp bend of the Red River and from that bend to the ninety-seventh meridian was three-fourths greater than the distance by the right lines connecting those three points, the whole distance by water from the Natchitoches to the ninety-seventh meridian was about 548 miles; that is to say, only a few miles less than Robin's estimated distance from the Natchitoches to the villages of the Taouyaches and

Quiteitas. There is apparent harmony, therefore, between Dr. Sibley and M. Robin in the location of these villages east of the ninety-eighth meridian.

865 An attempt was made in 1806 by Captain Sparks and others to visit the "Pawnee Piquas," but they were prevented by the Spaniards, who must have had jurisdiction over the land, as Sibley had reported. (Long's Expedition, vol. 2, pp. 302–314.)

Writing from data collected in 1804–1810, and advising the establishment of a garrison and factory on the Red River at the present northern boundary of Louisiana, Stoddard said that the Indians, who were then obliged to trade at Natchitoches, would be equally well, and perhaps better, supplied at the proposed factory, and that in addition to this the Pawnees (who were a different people from those of the same name on the river Platte) and Ietans and some other Indians high up on Red River and to the southwest of it might also obtain supplies from the whites, and thereby be prevailed on to break their connection with the Spaniards. Stoddard described these Pawnees as pursuing no other game than the buffalo, stating, however, that they attended to agriculture and raised more than double the quantity of corn and vegetables necessary for their own consumption, and furnished their neighbors with the surplus in exchange for peltries, so that their trade, then engrossed by the Spaniards, was deemed of considerable value. (Sketches of Louisiana, 455.) According to this statement the Wichitas would seem to have lived in the villages referred to by Sibley.

In his Views of Louisiana, published in 1817 (p. 88), Brackenridge states that the "Tawakenoes or Panis" live "south of the Red River, above the Caddoques." Inasmuch as the Tawakenoes are also referred to in their proper place by that writer, we conclude that this is a misprint for "Towiaches or Panis."

The maps of Melish of 1816, 1818, and 1820 show a "Panee" village on the south side of the Red River, about 96° 15′ west longitude. The Wichitas say, however, that the Melish maps are inaccurate. Since the interpretation given those maps by the Supreme Court in United States v. Texas (162 U. S. R., 1), their inaccuracy as to the location of the meridians, astronomically considered, is established. No doubt the longitude of some of the localities is incorrect, and the Panee village is placed farther east by the Melish map than it should have been, according to Sibley's report; but the fact is probably established that the village was on the south side of Red River, but somewhat farther west.

Humboldt's map, published in 1811 from data obtained in 1803, shows "Indiens Taouaiazes" about latitude 36° 30′ north, longitude 103° west. This indicates a Mexican belief that the Tawehash (Wichitas) were one of the nomad tribes of the Great Prairie.

Pike's map of the internal provinces of New Spain, based on information received by him in 1807, shows "Indiens Yawayes" south of the Red River. This probably is an engraver's error for "Tawayes"—that is, Tawehash.

The Wichitas, as Panis or as Paniassa, are located in Louisiana by De l'Isle's map of 1703, by Moll's map of 1715, by Bernard's map of 1720, and by De l'Isle map of 1722; by De l'Isle's map of 1741 on the south bank of the Arkansas River, in the Choctaw Nation; on Popple's map

of 1741 in Louisiana; but by his maps of 1735 and 1737 they are located "north of the Arkansas River." Mitchell's map of 1766 and Le Rouge's map of 1778 place them north of the Arkansas.

866 Referring to the Morse report, which states that the Wichitas lived on Red River 1,200 miles above its mouth in 1822 (Census, 1890, Indians, p. 11), Clark's census of Indian tribes, dated November 4, 1816, contains a statement that the Cadeau and Pancas Pique (Caddo and Wichita) tribes reside "on Red River near the south boundary line of the Missouri Territory." Major Long's report, February 20, 1821, states that the Osages had recently driven the Pawneys of Red River from their place of residence and compelled them to seek an abode upon the head waters of the "Brassis" or Colorado. (II Long's Exp., sec. 21, p. 366.) The Pawneys of Red River to whom he refers can only mean the Wichitas, because they are frequently referred to in Long's expedition under the name of Pawnee Piquas, whom Long confidently expected to find on the river which he thought to be the Red, but which proved to be the Canadian. Long's statement apparently explains the removal from the villages referred to by Sibley in 1805.

When the Chouteau treaty of 1830 was before the Senate, inquiry was made of Chouteau, who was a well-known trader, and who had traveled in the region of the Arkansas and Red rivers, as to the proximity of wild Indians to the Choctaw country. He replied that the nearest band of wild or savage Indians was the Paw-nis Pick, whose village was about 250 miles from Fort Gibson. He stated that they raised corn and vegetables in small quantities, and that other rambling tribes were to be found. These were the Padocas, Aitans, Huitsitas, Hichas, and Cousadas. Their range extended south. The Comanches, Arapahoes, Cayouwas, and other bands were reported as rambling from the head waters of the Great Platte, Arkansas, and Red rivers in the direction to San Antonio and parallel to that chain of the Rocky Mountains running south. This statement shows not merely that a distinction was made at that day between the roving Huitsitas (Wichitas) and the more sedentary Pawnee Picks (Panis Piques), but that the latter did not live within the country granted to the Choctaws in 1820 and regranted in 1830. A distance of about 250 miles from Fort Gibson indicates that the village was somewhere on the Red River, near the mouth of the Big Wichita, or perhaps on the Big Wichita, where Austin's map of Texas (published the year Chouteau's statement was made) shows a Towiash village. Wherever the village referred to by Chouteau was, it could not have been within the bounds of the country granted to the Choctaws, for Chouteau not only knew what those bounds were, they having been established ten years before, but he actually knew the country from personal examination, and it can not be doubted that if the Pawnee Picks, as he called them, or any other Indians had had a settlement within that country he would both have known the fact and would have reported it.

In the record are certain Indian statements which largely rest upon the traditions of the Wichitas. The most important of these and carrying the greatest weight in establishing an occupancy of the country are the statements of two aged members of the tribe named Ut-tuts-kins and Es-quetch-chee (Old Man) and of Niastor, chief of the Towaconies.

(Sen. Ex. Doc. 13, 48th Cong., 1st sess., 32 et seq.) These are supplemented by the opinions and information of Horace Capron, set forth in his report as special Indian agent for Texas, which in itself is a strong statement of the Wichita case.

867 Respecting these traditions, there is such an apparent want of any certain knowledge in the persons from whom the information is professed to have been derived, and such absolute want of competent knowledge on the part of the declarants of those material things to which they profess to speak, the statements do not address themselves to the court as possessing any great value, even if admissible as traditionary evidence under the principle relating to ancient boundaries. Neither the circumstances under which the testimony seems to have been derived nor the number and situation of the witnesses entitle the traditions to that credit usually attached to such evidence, weak though it may be at best.

Things transmitted from one generation to another in the lapse of time must necessarily come to be surrounded with much of error and untruth. Such is the case with matters of oral communication not covered by the written memorials of intelligent people. What, then, must be said of the traditions of a race of rude red people, whose reason was weak and imagination strong; who worshiped the sun and danced in the light of the moon to music made from the skin of snakes; of the children of Nature, whose superstitions led them to revel in stories of witchcraft and evil spirits, and whose powerful imaginations, fed by these superstitions, originated the weird tales respecting their origin and lineage?

With limited ideas of their ancestry, knowing but little of places whence their fathers came, an experienced traveler has testified that they could only speak upon the subject in general terms, and that in some instances, where their term of residence in a place was of short duration, they would either lose or conceal their knowledge of a country whence their ancestors came and assert that the Master of Life had created and planted their fathers on the site where they, their posterity, then lived. (II Long's Expedition, 371.)

The pages of fiction contain nothing more fanciful than the story of Pushmataha, founder of a dynasty and the white man's friend, who, according to the story of his race, sprang full-armed from the splinters of a pine tree as it was shivered by the lightning's flash. And yet this mythology of a race whose descendants are now before us as claimants finds its counterpart in the Wichita tale that their ancestors sprang from the rock of the Wichita Mountains. As proof, the one story is of no greater value than the other, and the Wichita theory of their origin is of no more importance than the early story of the Choctaws, who, according to Gayarre, ascribed their origin to Kamschatka.

But it is said that Albert Pike, when on the Red River in 1832, heard of a tribe called Pawnee Picts, living in villages in the vicinity of some mountains north of Red River, cultivating the soil near by, and who had, as his informants expressed it, "lived there always." That the Indians had lived in the neighborhood of Red River for a long time, though at different points, is substantially true, and the expression must be taken as meaning probably no more than that. If the expression meant the site of the particular village, it was not true, and the statement can not be relied upon even as evidence that the Wichitas had lived there a long time.

Ski-sa-ro-ka, "an intelligent Toyash," told Dodge "that their nation lived formerly south," a statement which is opposed to the theory of a migration from the north. (Am. State Papers, Mil. Affs., vol. 5, 381.)

868 Albert Pike was the commissioner of the Confederate States who made treaties with the reserve Comanches and other small tribes. Among these were the Wichitas, first known to him as the Ta-wai-hash, and so called in the treaty. This was in August, 1861, at which time the Wichitas, or Ta-wai-hash, preferred a claim to him for compensation "for the country south of the Wichita Mountains, on Cache and Clear creeks," and the treaty agreed that their claim for compensation should be considered and examined, and that which might be found just and right should be paid to them. Pike expressed the opinion, in his letter to the Secretary of the Interior, that when the United States sold their country to the Choctaws and Chickasaws an indisputable claim, by long-continued occupancy and possession and partial cultivation, to the country west of Cache Creek, between the mountains and Red River, to an indefinite distance west, existed in the Wichitas, for which they ought in common justice and honesty to be paid.

But General Pike possessed no personal knowledge that the Wichitas had occupied the leased district from time immemorial, and there are no circumstances which lend to his opinion the force of testimony. His letter was merely the expression of an opinion resulting from a promise to repeat in writing what, preceding the date of his letter (July 12, 1882), he had said to the Secretary of the Interior in regard to the Wichita tribe. The statements made by him were not under oath, and, while their integrity is not questioned as far as his knowledge went, the most that can be said for them is that the Wichitas preferred a claim to him for a small part of the leased district now known as the southern end of the Kiowa and Comanche Reservation. The claim then made does not include the present Wichita Reservation.

Catlin's North American Indians shows the Pawnee Picts and Wicos on the Red River about latitude 35° 10′ N., longitude 103° 15′ W. This would be in the "panhandle" of Texas. (Rec., U. S. v. Texas, supra, 171.)

General Bee found a Wichita village on Cache Creek about 30 miles from its mouth. (Rec., U. S. v. Texas, pp. 1219, 1221, 1225.) It does not appear how many of the tribe lived on Cache Creek, nor how long they had lived there. The proofs are numerous that the residence of the Wichitas was in Texas between 1836 and 1850.

The following maps show a Towiash village on the Big Wichita west of the ninety-ninth meridian, to wit: Lee's map of Texas, 1836, reproduced in United States v. Texas, 184; Austin's map of Texas, 1837, reproduced in United States v. Texas, 292; Hunt & Randel's map of Texas, 1839, reproduced in United States v. Texas, 168 and 1016; Arrowsmith's map in Kennedy's Texas, 1841; De Cordova's map of Texas, 1849. This shows a "Tanawash" village west of the one hundredth meridian and a village on the south side of Red River just above the mouth of the Big Wichita. Young's map, published by Mitchell in 1838 (U. S. v. Texas, 292), shows a Towiash village north of the Red River, west of the one hundredth meridian, omitting the Big Wichita altogether; but this map was admitted by Kennedy to be inaccurate, who reproduced it

in his book merely to show the location of land grants. (Kennedy's Texas, vol. 1, p. 336.)

Besides the maps there are other proofs of the residence of the Wichitas in Texas. In alliance with the Wacos were the Pawnee Picts,
869 or Towcashes, residing on the Red River, sometimes on the side of the United States and sometimes in Texas. (Kennedy's Texas, 1841, p. 349.)

Referring to the Towaccanies and Towcash, who were said to resemble each other and are often found associated in the same village, it is stated that they live high up on the Colorado, above San Saba. (Moore's Description of Texas, 1844, p. 32.)

The Whacoes, Tawacanies, Towcash, Aynies, San Pedros, Nabanchies, Nacadochuts, and Hitchies are small tribes, fragments of tribes long resident in Texas and properly belong to it. Originally, Hitchies excepted, they are of the Caddo stock, being offsetts from that family. (Statement of David G. Burnet, August, 1847; 1 Schoolcraft's Information Respecting Indian Tribes, 239.) A Wichita chief called Tawak-o-nee Jim testified in United States v. Texas (Rec., 364) that he was born in 1843 in Texas, and came to Fort Sill when about 10 years old, and that the Wichitas used to live at the To-wako-nee Hills in Texas.

Two years before the annexation of Texas the Republic of that name established a bureau of Indian affairs. All the country west of a line drawn from Red River to the Rio Grande through the five posts established was Indian country, from which settlers were to be excluded except by special permission. (Act Jan. 14, 1843, Tex. Laws, 19.) On the annexation of Texas, in 1845, jurisdiction over the Indians therein passed to the United States, and the Commissioner of Indian Affairs made a report declaring it to be necessary to organize a branch of that department within the boundaries of the territory acquired. He says: "Owing to the unsettled condition of the Comanches, Witchetaws, and other tribes who lead a wandering life, * * * sometimes being in Texas and sometimes in the United States, it has been impossible to extend over them the eye of this department. They have neither belonged hitherto to the one Government nor the other." (Sen. Doc. No. 1, 29th Cong., 1st sess., p. 454.) In 1846 the habits of the Indians within the Texas border were reported as so uncivilized and so predatory and wandering that correctness as to their number could not be relied upon. This report shows that the Towcash, Waco, Towagany, and Wachita Indians were on the Red River above the Cross Timbers, with their villages on both sides and near each other. (Pitchlynn's report, Jan. 19, 1846, to the Commissioner of Indian Affairs.) In March, 1846, commissioners met chiefs of the Comanche, Mescalero (Lipan), Tawakoni, Waco, Keechi, Kickapoo, Wichita, and "Towcash" tribes at Comanche Peak and held a talk with them in regard to a cessation of hostilities and horse stealing. This resulted in the treaty of May 15, 1846 (9 Stats., 844). This treaty was made in Texas, with Texas tribes, because of the sovereignty which the United States had acquired over them by the annexation. (We fail to see anything in the suggestion of the counsel for the Wichitas that the United States failed to carry out this treaty.) In 1847 a special Indian agent for Texas went to the village of the Wacos, Witchetas, Tah-wah-ca-roos, and Keechies

and compelled the return of stolen horses. This village was situated on the Wichita River, and the six tribes met there were reported as making corn to considerable extent. (Sen. Ex. Doc. No. 1, 30th Cong., 1st sess., 894–896.) If this statement be true the main Wichita village was on the Wichita River (i. e., the Big Wichita, where the village is
870 shown on De Cordova's map), while another village was near the Brazos. If the Wichitas lived on Cache Creek near Mount Scott at that time, it could only have been but a few families. In 1849 the Chickasaw agent reported the Wichitas and other Texas Indians as living in the western part of the Chickasaw country. (Ex. Doc., 31st Cong., 1st sess.) Catlett's report of that year (ibid., 968) stated, however, that they lived upon the Brazos head of the Trinity and upon the Big Wichita. Agent Neighbors, to all intents and purposes, confirms this report, and consequently before they could have been living in the Chickasaw country.

In 1851 the Wichitas * * * together with about eighty warriors from the Caddoes, Wacoes, and Keechies, together with a small proportion of women and children, were reported to have "within the last two years left Texas, and are now inhabiting the Wichita Mountains beyond Red River." (Sen. Ex. Doc. No. 1, 31st Cong., 1st sess., 523.) This is the first evidence of a residence north of Red River aside from the fraction of a village shown on that side many years before.

In 1851 the Indian agent reported the Wichita population as not over 500 souls. Two years later he reported the total population to be 314. (Sen. Ex. Doc. No. 60, 34th Cong., 1st sess., p. 37.) On July 19, 1852, Marcy passed the deserted Wichita village on Cache Creek, and three days later he came upon the new Waco and Wichita villages on Rush Creek, built after the removal from Texas reported by the agent in 1851. Marcy was probably ignorant of the fact that the Wichitas, or most of them, had been living in Texas. His report must be taken for what it is worth. He was of opinion that their claim to the country around the Wichita Mountains was guaranteed to them by the right of occupancy and possession. (Sen. Ex. Doc. No. 54, 32d Cong., 2d sess., pp. 69, 72, 77.) We attach no value to his opinion.

No treaty of limits has ever been made with the Wichitas. If they were the substantial people in the early days they now claim to have been, the omission to treat with them is remarkable. If the United States did not favor the peaceful and friendly tribe having some permanent abode, it was not because there was any desire to establish friendly relations with wandering savages at the expense of those willing to aid the pioneer whites in civilizing the country.

During the times the French, Spanish, Mexican, and Texas governments had dominion over the tribe the Wichitas were not recognized as aboriginal possessors of the soil. Ignored for two centuries by the political departments of five governments, how can the judiciary now establish limits of territorial occupation for them without something more specific than what we have to tell where their limits begun and where they ended in that vast region known as the Great Prairie west of the Cross Timbers?

We find as a fact that, even if the Wichitas occupied any portion of the prairie, they did not do so alone. Their claim, then, can not be considered an exclusive claim. Prior to 1833 twenty-seven other tribes resided

between Red River and the Canadian. And some six years before
removal of the Wichitas to their present reservation the North
Comanches and Kiowas were reported as numbering 18,950, while
Southern Comanches were placed at 1,000 in number. (Report A
Supt. Howard, 1852.) Whatever their number in the eighte
871 century, these last three bands roamed over the prairies and
certainly as much prairie Indians as any others. They were
numerous than the Wichitas, and, making greater use of the prairie,
more entitled to be called prairie Indians.

Which of these tribes was first on the prairie does not clearly app
but as the entire region was used indiscriminately by the various ba
and all were there in common from time to time, one insignificant b
can not now be deemed to have held the only original occupation of
country.

The failure of the Wichitas is greater still to show an established oc
pancy ahead of others to the reservation in suit, in the sense of Ind
occupation, until a date comparatively recent. It is quite probable t
from time to time they passed over it while roaming over other parts
the country north of Red River, but it is doubtful if their claim to
reservation would ever have been given life but for the act of the G
ernment in quartering them upon it after the Choctaw lease of 1855.

From all that appears in their earlier history, we find that the Wichi
were inhabitants of the country now constituting the present State
Louisiana, whence they were driven by the Chickasaws into the Cad
Nation, which, about the middle of the eighteenth century, was in nor
western Louisiana and northeastern Texas. For years before the annex
ation of Texas they were as much the subjects of foreign control a
jurisdiction as one of the domestic tribes within the jurisdiction of t
United States.

The court would be lost in the realms of conjecture in attempting
reconcile the different theories of the origin of the Wichitas. One
their traditions places the main tribe on the Neosho River, in Kans
about 1781, from whence two bands left the main tribe, one taking up
residence in Texas and the other locating near the present town of Wich
in Kansas. Modern reports class them as Wacoes and Towaconies, an
virtually one people. The three tribes speak the same language, an
those Wichitas prosecuting the present claim presumably came out
Texas. The Wacoes and Towaconies lived there beyond the prairies, an
pretend to nothing in the way of an interest in the land except unde
recent agreement.

We deem it unnecessary to pursue the inquiries into this branch of th
case further. The main issues have been presented. The labyrinth o
detail, if fully stated, would but serve to encumber the record. Our con
clusion concerning the matter of occupation is that the Wichitas hav
not established such an occupancy of the land in suit at the time of it
acquirement by the United States as would support the customary India
title, or possession of such character that the United States can now rec
ognize or is under obligation to protect for purposes of compensation.

We are strengthened in this conclusion not alone by the fact of the
purchase of the land from others claiming to be inhabitants of the country
but by the reports of the agents of the United States and the action o

the executive and legislative departments of the Government thereunder; the subsequent sale of the country to the Choctaws in 1820 under the supposition that the rights of the aboriginal occupants had been extinguished; the confirmation of the sale to the Choctaws in 1830 as to the reservation in suit; the subsequent admission of the Chickasaws
872 to certain rights; the lease of the land in 1855; the agreement which in 1859 put the Wichitas and their affiliates on the land, and, finally, the failure of the Wichita defendants to assert any claim of prior occupation at the time of the agreement which admitted them to possession. Every presumption is against them as rightful inheritors of the country which the proofs have not overthrown. We therefore dismiss this part of their claim, remitting to further consideration the agreement which established them on the reservation and the extent of their rights measured by that agreement alone.

The Quapaw occupation need only be considered with reference to the extent of country occupied by them with relation to the territory ceded to the Choctaws.

It is entirely possible that the territory actually occupied by the Quapaws did not extend as far west as the cession would indicate, but we know that they were a tribe friendly to the whites who lived west of the Mississippi River, and that they asserted dominion over an extensive scope of country in Arkansas and beyond. Except when the Osages, with whom they were often at war, did not successfully dispute their sovereignty, they attempted to exercise dominion over all they claimed. The Osage feud and the varying chances of war probably diminished their right to some of the country as an exclusive claim, but that is a question foreign to this cause. According to Clark and Chouteau, the Osages and other governments considered all the property included in the Quapaw cession as belonging to that tribe. (Amer. State Pap., vol. 11, Ind. Affrs., 177.)

The cession discloses some doubt on its face as to the extent of their possessions, but is sufficiently certain to include the leased district. Certain Quapaw "claims" are mentioned in the cession, but they relate to "land east of the Mississippi and north of the Arkansas River," and these claims were transferred with country more certainly thought to be owned by the Quapaws. The country west of the Mississippi and south of the Arkansas included in the cession is referred to not as territory merely claimed by the Quapaws, but as territory which both parties accepted as Quapaw country without referring to it merely as country "claimed." As to this, the Government believed that the Quapaws were in unquestionable ownership, not only because that tribe was found in possession, asserting dominion, and using it as a part of their territory, but because others were not found on the land asserting claims or in position to assert any. These coincidences made up rights of occupancy by the tribes, unlike the paper muniments of title prevailing among civilized people.

The contention that the Quapaws never laid claim "of their own accord" to anything but a small tract of land, the boundaries of which bear much resemblance to the reservation retained by them, and that through the machinations of the whites they were led to claim more than they would have done of their own volition, is not proven. There is reason to believe that the treaty with the Osages, subsequent to the

Quapaw treaty, embracing a part of the same land, grew more out of the desire of the United States to keep the peace among the Indians than by any belief that the Osages had any real title to the country acquired in the cession from them, which had previously been included in the Quapaw cession. But this fact does not help the Wichitas. For, as between two tribes like the Osages and the Quapaws, who were willing to stay in a country and hunt over a large portion of contiguous territory and fight for the right to do so, it is not probable that a wandering band like the Wichitas, indigenous to no place and unwilling to contend with their more warlike neighbors, had any such equal claims.

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There is less reason to suppose that the United States in first treating with the Quapaws sought to extinguish their supposed or exaggerated claims to the country than to believe that by the subsequent treaty with the Osages the object was to extinguish their real claims to previously acquired possessions. Without something more tangible on the subject than that before us we must conclude that the Osage treaty, covering a part of the leased district, evidences the interest which that tribe was willing to quitclaim to the United States and the Government was willing to buy, rather than the transfer of any substantial right to the land acquired from the Quapaws.

What rights did the Wichitas acquire in these lands by virtue of the treaty of August 24, 1835? And did the United States and the Choctaw Nation acknowledge the Wichita title by occupancy to the Great Prairie which they are now estopped to deny? (7 Stats., 474.)

Texas at the time of that treaty had not been admitted to the Union and the territory covered by its terms lay anywhere between the United States and the settlements and hunting grounds of the Indians named in the treaty and the Republic of Mexico within the meaning of its third article; and covered all of the country north of Red River within the meaning of its fourth article, which are only material to notice in this connection.

It can not be determined from the proof precisely where this treaty was made, but it could not have been far from Red River. Its effect as a grant and an acknowledgment of a Wichita title by occupancy are material to consider.

The treaty of 1835 was the result of an expedition sent out by the United States to our western border under the command of Colonel Dodge. On July 22, 1834, Colonel Dodge made an address to the Toyash chiefs and warriors in which he stated that his party were the first American officers who had ever come to see the Pawnees, and that they had met as friends, not as enemies, to make peace; that the great American chiefs wished also to make peace between them and the Osages, who had been at war with the Pawnees, and to secure peace also between them and the Cherokees, Senecas, Delawares, Choctaws, and all other red men. It was shown to the Wichitas that the American officers had met a party of Comanches, with whom it was also desired they should be at peace. (Doc. 2, 23d Cong., 2d sess.) On the next day a similar address was made to the Comanches, but supplemented by a statement as follows:

"You say that the Indians over Red River are your enemies. They kill you when you meet. These are Mexican Indians and do not make treaties with our great father, the President. But he will protect you when you make peace with the Osages and other tribes that have been at war against you." (Doc. 2, 23d Cong., 2d sess., p. 83.)

Major-General Macomb, in giving an account of the expedition, says that Colonel Dodge held a council with the Comanches and
874 Pawnees (or Toyaslas), the Kiowas, and the deputation of Indians which accompanied him, amounting in all to about 2,000 persons, explaining the object of the expedition and that he was instrumental in bringing about a friendly intercourse between several hostile tribes. (Ibid., p. 44.)

The official report of the Secretary of War shows "that some of the western tribes of Indians roaming through the extensive prairies west of Arkansas and Missouri, particularly the Comanches and Kiowas, have for some years interrupted the peace of that quarter by predatory attacks upon our citizens, and upon the indigenous and emigrant Indians whom we are under obligations to protect. * * * The dragoons were ordered to establish permanent tranquillity; and if this should fail, to repel any hostile demonstrations which might be made. The object of the expedition was obtained without a single act of hostility." (Ibid., pp. 33, 34.)

The President informed Congress in his message of the movement "into the territory of the wandering and predatory tribes inhabiting the western frontier and living adjacent to the Mexican boundary, known principally by their attacks upon our own citizens and upon other Indians entitled to the protection of the United States," and that the object of peace had been effected. (Ibid., 17.)

The treaty accomplished, then, what was contemplated to be done. The preamble states that it was entered into "for the purpose of establishing perpetual peace and friendship between the United States and the Comanche and Wichita nations and their associated bands or tribes, and between those nations or tribes and the Cherokees, Muscogee, Choctaw, Osage, Seneca, and Quapaw nations or tribes of Indians." Whatever rights, then, recognized or given were incidental to the main object of peace, and the treaty was not one of limits or of cession.

The first and second articles provide for perpetual peace and forgiveness for past injuries.

Article 3 provides:

"There shall be a free and friendly intercourse between all the contracting parties hereto, and it is distinctly understood and agreed by the Comanche and Wichita nations, and their associated bands or tribes of Indians, that the citizens of the United States are freely permitted to pass and repass through their settlements or hunting grounds without molestation or injury on their way to any of the provinces of the Republic of Mexico, &c."

Article 4 provides:

"It is understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the great prairie west of the Cross Timbers to the western limits of the United States."

Article 5 provides:

"The Comanche and Wichita nations, and their associated tribes or bands of Indians, severally agree and bind themselves to pay full value for any injury their people may do to the goods or other property of such traders as the President of the United States may place near to their settlements or hunting ground for the purpose of trading with them."

Article 6 provides:

The Comanche and Wichita nations, and their associated bands or tribes of Indians, agree that in the event of any of the red people belonging to the nations or tribes residing south of the Missouri River and west of the State of Missouri, not parties to this treaty, should visit their own towns or be found in their hunting grounds they will treat them with kindness and friendship and do no injury to them in any way whatever."

875 The treaty was not signed by any of the associated bands, and for this reason it is contended that they were not parties to the agreement. This is true as far as any obligations to or from the associated bands extended, but not true in the sense that the signatories did not recognize them to be in possession of such settlements and hunting ground on the way to the Republic of Mexico from the United States as were possessed by the others. In any event whatever rights were conceded to be in the Wichitas the same rights were also recognized to be partly in the Comanches, so that if the few hundred Wichitas in existence at that time had settlements and hunting grounds in the pathway of travel from the United States to Mexico, then numbers of Comanches had settlements and hunting grounds along the same route.

The contention that the Comanches were improperly joined because of the probability that they were in Texas can not be accepted in the face of the treaty which recognized the Comanches to be in the United States as well as in Mexico; and as Colonel Dodge found a large body of them not far from the border, as he did the Wichitas and the associated bands, and both Comanches and Wichitas treated for a common purpose, the Comanches can not be held to have been improperly joined. That all of the associated bands and Wichitas, as well as Comanches, roamed in one country about as much as in the other, and had been living in Mexico as well as in the United States, appears in the history of that time. They were all regarded as land pirates of the great West who depredated upon the Mexicans of the interior States and murdered our own people on the road from St. Louis to Santa Fe (Raines's report to Lewis Cass, Secretary of War, Mar. 11, 1836), and were on Red River, sometimes in the United States and sometimes in Texas, in alliance with the Wacos and the Caddos as far as the Pawnee Picts were concerned. (Rep. Tex. Commr. Ind. Affs., Nov. 3, 1838; Sen. Rep. 171, 30th Cong., 1st sess. 47; Kennedy's Texas, vol. 1, 349.) Fragments of tribes, separately considered and quite insignificant, include the Toweash, "long resident in Texas" and properly belonging to it. (Statement of the President of the Texas Republic, Aug. 20, 1847; 1 Schoolcraft, 239.)

Whatever presumptions arise from the recitals respecting the settlements of the border tribes, the references relating to such settlements apply to the year of the treaty. This was seventeen years after the extinguishment of the Quapaw title and ten years after the Osage quitclaim. And it does not appear when the border tribes established their

settlements or to what extent or where. The evidence leaves no room to doubt that whatever settlements the Comanches, Wichitas, and associated bands possessed they were either on the border or close to it, but when they got on the American side is not shown. Even if on the American side there is no proof showing any of the settlements on the immediate land in controversy. There is a gap in the history of the Wichitas from the time Sibley mentions them, in 1805, to the time Dodge visited them, in 1834. This the Wichitas admit (Rec., 1340), and the account they attempt to give of themselves in the meantime does not satisfactorily account for what they themselves admit.

Again, it is unreasonable to suppose that several thousand Choctaws would, for the sake of peace with a few hundred Wichitas, knowingly surrender large bodies of land which the larger tribe was very well
876 able to defend, and as neither the Choctaws nor the United States supposed the treaty referred to claims of any kind on the land, and the cession of territory was not the purpose of the treaty, neither the Choctaws nor the United States are estopped to deny the Wichita claim of prior occupation.

As the Choctaws and Creeks extended their occupation and improvements to the country acquired by them under grants from the Government the Comanches became dissatisfied. This led to a construction of the treaty of 1835 by the Indian Office. In 1837 instructions were given to the special Indian agent which, after calling his attention to the dissatisfaction of the Comanches, directed him to explain to that tribe the matter so that they might understand the United States had purchased the lands from the tribes possessing the occupant title and had guaranteed the exclusive right in the emigrant Indians. (Instructions to Agent Chouteau.)

The emigrant Indians included the Choctaws, and under the instructions Chouteau and another commissioner for the United States entered into a treaty on May 26, 1837, with the Kiowas, Katakas, and Towacoros. (7 Stats., 533.) This treaty was in effect a construction of the previous treaty of 1835. It was at least inconsistent with any cession in 1835 to the Wichitas or others, and at variance with the idea that the Government supposed in 1835 it was making any admission as to the title to these lands.

But if the treaty of 1835 be considered an admission of Wichita occupation, it must also be construed with that of 1837 as an admission of Osage, Quapaw, Seneca, Comanche, Muscogee, and Cherokee occupation. Neither treaty appears to us as an admission of title in favor of any tribe at the expense of the emigrant tribes who already owned the land under contracts, and who only agreed to share the privilege of hunting on the land with the nomads of the treaty to secure the peace and quiet designed by the Government in the first instance.

The joint claim of the defendant Indians to the lands leased is based upon an alleged agreement made with the United States at Fort Arbuckle on July 1, 1859. This supposed agreement is not made the foundation of the Wichita claim, but as confirming their more ancient title and admitting the affiliated bands to an interest in it.

Under apprehensions of an attack from the Comanche tribe, the Wichitas in a body had abandoned their village at Rush Creek and retreated

to Fort Arbuckle, in the Chickasaw country, in 1858. Under threats of extermination a number of other tribes had fled from Texas to the same vicinity.

By the treaty between the United States and the petitioners in 1855 certain territory was leased for settling thereon a large number of Indians, described as follows:

* * * "The Wichita and such other tribes or bands of Indians as the Government may desire to locate therein, excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas." (11 Stats., 613.)

That the defendant Indians were not to have exclusive occupation of the leased district, but only sufficient land for their actual occupancy, was contemplated, and that the Government intended to settle other tribes there is shown by the official history of the time. (Ind. Commr's
877 Reports, 1855, p. 473; 1856, pp. 566, 726; 1857, pp. 296, 549; 1858, pp. 354, 355–360, 526.)

Fifty thousand dollars was appropriated for the expense of collecting and establishing the southern Comanches, Wichitas, and certain other bands of Indians, on reservations to be located south of the Arkansas and west of the ninety-eighth degree of longitude. (Act of March 3, 1857, 11 Stats., 183.)

The tribes whose permanent ranges were immediately south of the Arkansas were the Comanches, Kiowas, and Apaches, with whom the United States had made a treaty on July 27, 1853, wherein they are described as "inhabiting the said (Indian) territory south of the Arkansas River." (10 Stats., 1013.) The authority to settle upon the leased district all Indians who properly belonged south of the Arkansas and east of New Mexico is clear, but when the district was first leased it was not intended to place upon it the greater number of affiliated bands, viz, the Anadahkos, Caddoes, Tawakonies, Wacoes, Tonkawas, and Penetethka Comanches, as they had but recently been placed on reservations in Texas, where they were doing fairly well, and the Texan hostility to them did not break out till the latter part of 1858. (Reports for 1855, H. Ex. Doc. No. 1, 34th Cong., 1st sess., pp. 330, 497–505.) These reservation Indians, however, were as much within the purport of the provision for the use of the leased district as other Texas Indians. While the Choctaws and Chickasaws retained the right to settle in the leased district, it does not appear that any of them actually did so.

Besides the language employed in the treaty of 1855 respecting the purposes for which the leased district was obtained, we find that the western end of the Choctaw country was to be opened to the permanent settlement of the Southern Comanches, Wichitaws, and such other Indians, within prescribed limits, as the United States might determine to locate therein. (Ind. Commr's Rept., Nov., 1855, p. 329.) The southern Comanches were nomadic savages, living in the central and southern part of western Texas, and numbered several thousand. The Penetethka Comanches were not of the same band. They numbered something under 300, in 1855, in Texas, where they had just been placed on a reservation. (Ibid., 498.)

On March 30, 1859, the Acting Commissioner of Indian Affairs instructed the superintendent within whose charge the leased district lay as follows:

"Fix upon a suitable location for the Wichitas, and make such examination of the country as will enable you to determine the proper places for locating and colonizing the Texas and other Indians which it is intended to place within that district. In carrying out this policy, the different bands, so far as they can not be united, are to be located upon distinct reservations, with circumscribed limits, containing only so much land as may be necessary for their actual occupancy and use. * * *

"So soon as it may be practicable and safe for the Wichitas to remove to their new location, you will require them to go there, giving them to understand that it is to be their permanent home. * * * The same understanding must be impressed upon the other Indians."

On September 20, 1859, the agent reported as follows:

"In pursuance of instructions from your office * * * I selected, in the month of June last, reserves on the Fausse Wachita River, near the old Kechai village, and about 40 miles northeast of the eastern extremity of the Wichita Mountains, in the river valley, on the
878 south side for the Comanches and other Indians from Texas, and on the north side, between the river and Sugar Tree Creeek, for the Delawares and Caddoes, heretofore affiliated with the Wichitas or Ta-wai-hash; and for the latter and the bands of Kechais affiliated with them, I selected a reserve on the Canadian, some 25 miles west of those on the Fausse Wachita." (Sec. of Interior's Rep., 1859, pp. 382–3, 533, 633.)

He further reported that, for reasons stated, he had included pasture lands in these reservations, making them much larger than was needed for cultivation. Their aggregate area was 154,240 acres.

Superintendent Rector, of the southern superintendency, primarily represented the United States in the council at Fort Arbuckle. Major Neighbors and Albert Pike were officially associated with them in behalf of the Government. It is conceded that contemporary correspondence concerning the agreement alleged to have been made there is silent on the subject of what promises were made to the Wichitas and others (Rec., 630), but it is claimed that the evidence given since then by those present proves the contentions of the answer respecting the confirmation of the more ancient title of the Wichitas.

We deem it unnecessary to review the occurrences between the agents of the United States and the defendant Indians which led to their removal. We find as a fact that the tribes assembled at Fort Arbuckle were told that the Government would give to them for their occupancy reservations then established, containing 154,240 acres, for farming and grazing purposes, and that they would be allowed to hunt, when permitted to leave the reservations for that purpose, on any land within the leased district not specifically assigned to other Indians.

The Indians who had fled from Texas got larger reservations by consenting to remove than the 12 square leagues they had while in Texas. These numbered three-fourths of the tribes present. The Wichitas and the remnants of other tribes, who constituted one-fourth of those present, then possessed the right to hunt and trap on the Great Prairie, but had been deprived of even that privilege to any appreciable extent by hostiles.

This right was surrendered when they consented to go on the new reservation, but nothing more. The Texas Indians surrendered nothing which they were then either able to enjoy or claiming the privilege of enjoying.

The agents of the United States made no treaty with these people in 1859. Evidently the Government considered treaties to be unnecessary. The want of them does not relieve the Government of its duty to make good its duly authorized promises; but no agreement, in point of fact, was made to give to the defendant Indians the leased land, and if any construction there was, those representing the United States were without authority to make such agreement. Nothing stated then could bind the United States with respect to the title to the reservation; still less could anything which occurred at Fort Arbuckle take from the Choctaws and Chickasaws rights reserved by them under the treaty of 1855 in the leased land.

A Government astronomer employed to locate the ninety-eighth and one hundredth meridians made a map of the leased district, writing across it the words "Leased country for Caddoes, Wichitas, Keechies." An army officer transmitted this map to the War Department with a letter alluding to the district as the "Wichita country." This is the origin of the name applied to the reservation in suit.

879 The defendant Indians fled to Kansas during the war, but returned apparently to the same reservations in 1867. (Ind. Commr.'s Rept., 1867, p. 23.) In the meantime, however, the Government had made a treaty with the Comanche and Kiowa Indians, October 18, 1865. (14 Stats., 717.) It was provided that a district bounded by the New Mexico line, a line from the southeast corner of New Mexico to the mouth of the North Fork, the Red River to the ninety-eighth meridian, that meridian to the Cimarron, that stream to the Kansas line, to the New Mexico line, "or such portion of the same as may hereafter from time to time be designated by the President for that purpose," should be "set apart for the absolute and undisturbed use and occupation of the tribes who are parties to this treaty and of such other friendly tribes as have heretofore resided within said limits, or as they may from time to time agree to admit among them." This district included the entire leased district; and ultimately the present Kiowa and Comanche Reservation was established within that district by the treaty of October 21, 1867. (15 Stats., 581.) The Cheyenne and Arapahoe Reservation, disposed of by the act of March 3, 1891 (26 Stats., 1022), was similarly carved out of the leased district by Executive order of August 10, 1869.

The title to Greer County was then in dispute between Texas and the United States. With the setting apart of the reservations above named the country covered in the present Wichita Reservation was left undisposed of and open.

An agreement between the Wichitas and the United States is offered in evidence as the only action of the Government looking to an extinguishment of the occupancy of the Wichitas of territory outside their present reservation to which that tribe was a party. This agreement appears to have been made October 19, 1872. (Sen. Ex. Doc. 13, 48th Cong., 1st sess.; Rec., 435.) The only importance claimed for it by the

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defendant Indians is that it first laid out the restricted bounds of the reservation in suit in which it was intended the Indian defendants should live.

The agreement purports to grant to the defendant Indians, for a home, the tract of country known as the Wichita Reservation in consideration of the cession by the Indians of all right, title, interest, or claim of any nature in and to any lands in Texas, Louisiana, Indian Territory, or elsewhere within the limits of the United States. It was made on the part of the Indians by members of the tribe, professedly without authority; and on the part of the United States by the Commissioner of Indian Affairs, also without authority, and was never recognized by Congress until the act of March 2, 1895, under which the rights of all the parties to this suit were to be ascertained. The agreement is therefore subject to the rights of the parties as ascertained by the courts.

The efforts to revive the agreement for any purpose is met at the outset by the absence of the claimants as parties to it and the fact that their rights can not be affected by it. Nor can the defendant Indians claim title to the reservation assigned and at the same time be heard to repudiate the agreement for what it takes from them. This they are attempting to do in asserting larger claims. If any trust of any character in the lands existed it would be inconsistent in the United States to say that the agreement assigned homes to Indians which now can be taken
880 from them by opening the lands to white settlement. The most that can be said for the agreement is that if valid for any purpose it became so for the assignment of homes to the tribes by the Indian Office, for which the tribes paid nothing, either in money or in land as the equivalent of money.

The questions in this case involving greater difficulty are: (1) The character of the estate conveyed by the Choctaw Nation to the United States by the treaty of 1855, and (2) in what respect the rights of the petitioners have been violated, if at all, and to what extent, and (3) upon what basis, if any, rights of the claimants have been violated shall the interests of all the parties be adjusted?

Certain subordinate matters are necessary to be examined to properly interpret the treaty claimed to be violated.

The Choctaws are an ancient race of red people whose early homes were east of the Mississippi River. The United States made their first treaty with them in 1786, by which certain aboriginal rights of the tribe as occupants of the soil were specially recognized. Thus, before the adoption of the Constitution, following the example of the discoverers of the continent, the United States began to recognize customary Indian rights in the Choctaws to lands occupied by them.

Before the Revolution the right to regulate trade with the Indians within the colonies was understood to belong to the prerogative of the Crown (Story on Const., sec. 1099), and Federal supervision and control of the tribes was conferred by the Constitution, which gave power to Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes." (Const., sec. 8, art. 3.) The first Indian-intercourse act was passed July 22, 1790, and was followed by the permanent act of 1802, which established Federal supervision over contracts for the extinguishment of Indian title to lands within the several States.

Difficulties were encountered in the enforcement of the intercourse laws, which resulted in the policy of removing the tribes from the white settlements and segregating Indians upon reservations. Exchanges of lands were accordingly made by treaty with the tribes, not merely because of duty to a dependent people, but also because any other course was incosistent with the public peace. The character of the titles obtained by the Indians under these treaties have never been questioned. The lands conveyed to the Indians were qualified as to the fee in more or less degree, while those given in exchange to the United States by the Indians generally conveyed whatever rights of occupancy the Indians had.

When the Louisiana territory was acquired Congress manifested its policy of removing Indians by authorizing the President to exchange for lands occupied by the tribes east of the Mississippi River the country owned by the United States lying west of the river, where the tribes would be free from the encroachments of the whites and under the general superintendency and protection of the Government. (Act March 26, 1804; 2 Stats., 283.)

In 1817 Mississippi was admitted to be a State in the Union, and some of the lands occupied by the Choctaws were wanted, and as the result a treaty was concluded between the United States and the Choctaw Nation October 18, 1820, in which the removal of the tribe was provided
881 for in part upon the assurance that the objects of the United States were grand and humane in the promotion of their civilization and their perpetuation as a nation.

In consideration of the cession to the United States by the first article of the treaty of the land therein mentioned, lying in Mississippi, by the Choctaws, the second article of the treaty "and in part satisfaction for the same" ceded to the Choctaw Nation a tract of country west of the Mississippi River situate between the Arkansas and Red rivers and bounded as follows:

"Beginning on the Arkansas River, where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian fork and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning." (7 Stats., 211.)

By treaty of January 20, 1825 (7 Stats., 234), the eastern boundary line of the Choctaw Nation, as defined by the first treaty, which took some of those people west of the Mississippi, was modified by the retrocession to the United States of a fraction of the land first acquired in 1820 by the Choctaws from the United States. But no land was retroceded in this readjustment of boundary lines by the Choctaws from their possessions on the west. So, if by the treaty of 1820 the Choctaws acquired title to any territory beyond the 100th meridian, that title remained unimpaired so far as any agreement was concerned.

The defendants say that prior to the cession to the Choctaw Nation the land west of the one hundredth meridian had been ceded to Spain. This contention will be examined later, but for the present is noted to array the facts in consecutive order.

The treaty of 1820 did not satisfy the demand for Indian land, and the enactment of certain laws subjecting the Indian occupants to local

vernment caused the United States to take steps looking to the establ-
hment of the Choctaws on the reservation west of the Mississippi, which
sulted in another agreement under which assurances were given that
on the removal of the tribe they were to be free from the presence of
hite men.

By the treaty concluded September 27, 1830, called the treaty of Dance-
g Rabbit Creek, it was provided in the third article (7 Stats., 333) that
e Choctaw Nation should and did thereby cede to the United States the
ntire country they then owned and possessed east of the Mississippi
iver, and that they would remove as early as practicable; and that the
hoctaw Nation should and did surrender to the United States all the
emaining lands at that time owned by them in Mississippi. Under this
reaty the body of Choctaws removed from their possessions east of the
iver to the lands purchased and acquired by them west of the river under
he terms of the treaty of October 18, 1820, as modified in 1825, and as
he limits were defined in the treaty of Dancing Rabbit Creek. Thus
here was no cession of lands east of the Mississippi River for lands west
f that river by the treaty of 1830. The exchange made in 1820 left
he Choctaws with ten million acres of land, which, by the treaty of 1830,
he United States got for nothing.

The amount and sufficiency of the consideration received by the Choc-
aws for their possessions need not be considered. Whether the bargain
which dispossessed them of their early possessions and gave to
82 them other land was upon adequate consideration, and whether
their removal was forced upon them and how it was done, is no
art of our duty to consider. It is enough to say that the Choctaws had
ubstantial rights to barter; and in surrendering lands and agreeing to
move and carry out agreements the Choctaws furnished a sufficient con-
ideration for whatever contracts the Government entered into with them
respecting their new possessions. The treaty agreements had all the
ecessary elements of binding contracts. (Foster v. Neilson, 2 Pet., 314;
Head Money Cases, 102 U. S. R., 540.)

The reasons that prompted the Government to contract for the change
f domicile of the Choctaws and Chickasaws also moved the authorities
o treat with the Cherokees, the Creeks, and the Seminoles. These tribes
nd the petitioners together had their early homes in Tennessee, Georgia,
Alabama, and Mississippi. Seven treaties were made with the Cherokees
between 1785 and 1835, and nine treaties were made with the Creeks,
beginning in 1790 and ending in 1833. Two treaties were made with
the Seminoles, who constituted a branch of the Creeks, in 1834. (7 Stats.,
—.) Most of these treaties related to the rights and claims of the tribes
as occupants of the soil east of the Mississippi, and were based on the
same political motives which actuated the Government to obtain the title
n the case of the Choctaws.

Under the trade and intercourse act of June 30, 1834, Congress pro-
vided that "all that part of the United States west of the Mississippi
nd not within the States of Missouri and Louisiana or the Territory of
Arkansas" should, for the purposes of the act, be considered the Indian
country. Reduced by the successive formation of States and Territories,
he remainder now constitutes the Indian country. Under the policy

which secured the removal of the Southern Indians, other tribes were at various times removed to that region from different parts of the country, but some of them now there are indigenous to the soil.

The treaties with the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws, providing for their removal, were executed nearly contemporaneously and, having the same objects and purposes, contained many similar provisions. Under them these five tribes were placed near each other in the Indian country. There they formed Indian governments, unmolested for many years by the whites, becoming known as the Five Civilized Tribes, and their institutions prospered as no other experiment of the kind before or since has done among the Indians, without any great degree of intelligence among the masses, it is true, but in a manner generally satisfactory to the Government.

In contracting with the Five Tribes, the Government intended and the Indians expected that the exchange of lands would insure to the tribes permanent homes and local self-government not inconsistent with the Constitution of the United States and the acts of Congress regulating trade and intercourse, but free from white intruders. Messages of State and Territorial governors, letters from heads of Executive Departments, propositions of commissioners authorized to deal for the Government with the tribes, and general history abound in statements which prove the inducements held out to the tribes to be as stated, if they would but make an exchange of lands. These official and historical statements need not be repeated in detail, as judicial notice will be taken of them. Guarantees followed each treaty, or were a part of each, substantially
883 securing to the tribes (which included the Choctaws) governments of their own unembarrassed by white intrusion or the jurisdiction of any State or Territorial government.

The act authorizing the President to cause a patent or grant to be made to a tribe for their new possessions was pursuant to the policy of keeping the whites away from the Indians. (Act of May 28, 1830, 4 Stats., 411.)

The early treaties with the Cherokees, the Creeks, and the Seminoles are mentioned because subsequent treaties with them will hereafter be noticed as serving to explain the dealings of the Government in its attempt to secure more land for the use of Indians without reservations; and they illustrate, in part, at least, if they do not materially interpret, the treaty made with the Choctaws and Chickasaws when the Government came to treat with those tribes for the land described in this suit.

The treaty of 1830 stipulated that the United States should issue a patent to the Choctaw Nation as follows:

"ARTICLE 2. The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River; running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning."

Besides the patent promised to the Choctaws, the United States obligated themselves, by the fourth article of the treaty, to secure to the Choctaw Nation the jurisdiction and government of all the persons and property that might be within their limits west, so that no Territory or State should ever have the right to pass laws for the government of the Choctaw Nation and their descendants; no part of the land granted them should ever be embraced in any Territory or State; but the United States should forever secure said nation from and against all laws except such as from time to time might be enacted in their own national councils, not inconsistent with the Constitution, treaties, and laws of the United States, and except such as might, and which theretofore had been, enacted by Congress, to the extent that Congress, under the Constitution, were required to exercise and legislate over Indian affairs. It was further provided that all intruders should be removed from the Choctaw Nation and kept without.

Private property was to be always respected, and on no occasion taken for public purposes without just compensation being made therefor to the rightful owner.

Pursuant to the stipulation the patent provided for was issued to the Choctaw Nation, of which the following is a copy:

"The United States of America, to all whom these presents shall come, greeting:

"Whereas by the second article of the treaty begun and held at Dancing Rabbit Creek, on the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty [as ratified by the Senate of the United States on the 24th day of February, 1831], by the commissioners on the part of the United States, and the Mingoes, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that 'the United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation' a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where
884 the Arkansas boundary crosses the Arkansas River; running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning, the boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825.

"Now, know ye that the United States of America, in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation the aforesaid tract of country west of the Mississippi, to have and to hold the same, with all the rights, privileges, immunities, and appurtenances, as intended to be conveyed to them in the aforesaid article, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation except to the United States, and with their consent."

The act of Congress of May 28, 1830 (4 Stats., 411, supra), referring to patents to be issued to land, is as follows:

"Be it enacted, &c., That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside and move there, and to cause each of said districts to be so described, by natural or artificial marks, as to be easily distinguished from every other.

"2. And be it further enacted, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the States or Territories, and with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one or more of the States or Territories, where the land claimed and occupied by the Indians is owned by the United States, or the United States are bound to the State within which it lies to extinguish the Indian claim thereto.

"3. And be it further enacted, That in the making of any such exchange or exchanges it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

The contention that the United States derived their sole authority to convey the lands covered by the patent to the Choctaws under the act of Congress of May 28, 1830 (supra), relates to the defense of the Wichitas with respect to their claim as aboriginal occupants. They aver that no authority of law existed for the conveyance to the Choctaws by patent under that act, because the Wichita title as occupants had not been extinguished when the patent was issued to the Choctaws. As the Wichitas have not shown any aboriginal title to extinguish and the United States have not denied the validity of the grant as far as admitted to be extended, it follows that for all the land the Choctaws acquired under the patent title thereto passed to them according to the recitals of the grants; but upon the theory that the Wichitas have rights as occupants their contention will be noticed.

By the first section of the act May 28, 1830, the right of the Government to convey public lands to which title of the Indians had not been extinguished was limited, but the right to convey by treaty independent of that act existed as full as before the enactment. It has been held that although the act might be applied to lands ceded to the Cherokees, it did not necessarily apply under that treaty, because a sale could be made directly by a treaty. (Holden v. Joy, 17 Wall., 211.) In the case of a grant by the Government under these circumstances, no doubt, rights by

virtue of occupation would be recognized in the form of compen-
885 sation to those deprived of aboriginal possession by Government interference, but the superior right of those claiming under a cession from the Government by treaty and without the patent is not open to discussion. (Beecher v. Wetherby, supra.)

The second treaty with the Choctaws providing for the cession of lands to them contains no allusion to the act of May 28, 1830, and that treaty must be regarded as a confirmation of the session made in 1820 within the limitations imposed by the terms of the last grant.

Even then, if the Wichitas possessed an unextinguished aboriginal title, the treaty with the Choctaws operated directly upon the grant, free from any occupation claim on the land itself, or for the value of the land as against the grantees. That was a matter between the Indian occupants and the United States.

The valid and binding force of the treaty of 1830 has been repeatedly recognized by various acts of Congress. One act provides for the satisfaction of all claims arising under the treaty. (Act of August 23, 1842, 5 Stats., 513.) Another authorized a suit to be brought by the Choctaws in this court, for the recovery of money claimed to be due them under the treaty. (Act March 3, 1881, 21 Stats., 334.) In the case of The Choctaw Nation v. The United States, the judgment in favor of the Choctaws largely rests upon the provisions of the treaty of 1830. (Choc. Nation v. U. S., 119 U. S. R., 1.) The treaty had been carried into effect, and came within the rule declared in Holden v. Joy (supra), where it was said, "but it is not necessary to decide the question in this case, as the treaty in question has been fully carried into effect, and its provisions have been repeatedly recognized by Congress."

The Chickasaws were neighbors of the Choctaws east of the Mississippi River. They were a distinct nation, occupying a large tract of country in Tennessee and Mississippi, and spoke practically the same language as the Choctaws. Efforts were made from time to time by the Government to remove that tribe, with the result that a treaty was made between the United States and the Chickasaws, which was proclaimed 1st day of March, 1833 (7 Stats., 381), by the first article of which these Indians ceded to the United States all of their property lying east of the Mississippi. By its second article the Government agreed to have the property ceded to it surveyed and sold, and another article provided for a payment to the Chickasaws of the proceeds of such sale as compensation for said lands. The Chickasaws agreed to hunt up and procure homes for their people west of the Mississippi, suited to their wants and conditions. It was stipulated that, should they fail to procure such a country to remove to and settle on, previous to the first public sale of their lands east of the Mississippi, they were to select out of the surveys in the Chickasaw Nation a comfortable settlement for their families, to include the then present improvements if the land was good for cultivation, and if not they might take it in any other place in the nation unoccupied by any other person. Following this came the treaty of May 24, 1834 (7 Stats., 450), in which it was provided that "the Chickasaws are about to abandon their homes, which they have long cherished and loved, and, though hitherto unsuccessful, they still hope to find a country adequate to the wants of their people west of the Mississippi and within the limits

of the United States. Should they do so the Government of the
886 United States hereby consents to protect and defend them against the inroads of any other tribe of Indians and of the whites, and agrees to keep them without the limits of any State or Territory." Under these conditions negotiations were commenced between the Choctaws and Chickasaws at the instance and under the supervision of the Government, the result of which was that on January 17, 1837, a convention was entered into between the Choctaw and Chickasaw nations (11 Stats., 573), which was approved by the United States. Its third article provides as follows:

"ARTICLE 3. The Chickasaws agree to pay the Choctaws, as a consideration for these rights and privileges, the sum of five hundred and thirty thousand dollars, thirty thousand of which shall be paid at the time and in the manner that the Choctaw annuity of 1837 is paid, and the remaining five hundred thousand dollars to be invested in some safe and secure stocks, under the direction of the Government of the United States, redeemable within a period of less than 20 years, and the Government of the United States shall cause the interest arising therefrom to be paid annually to the Choctaws in the following manner: Twenty thousand dollars of which to be paid as the present Choctaw annuity is paid, for four years, and the residue to be subject to the control of the General Council of the Choctaws, and, after the expiration of four years, the whole of said interest to be subject to the entire control of the said council."

Under the agreement of 1837 the Choctaws sold to the Chickasaws certain rights and privileges, out of which grew some dissensions resulting in the treaty of June 22, 1855, proclaimed March 4, 1856 (11 Stats., 611), between the United States and those nations. By article 1 the boundaries of the Choctaw and Chickasaw country were defined, and the country guaranteed to the Choctaws and Chickasaws, subject to the reversionary rights of the United States.

By article 2 the Chickasaw district was reestablished to the ninety-eighth meridian on the west.

By the ninth article the Choctaws relinquished all their right and title to the lands which by the treaty of 1820 they claimed had been ceded to them but which the United States had also ceded to Spain in 1821. The lands thus relinquished to the United States lay west of the one hundredth meridian.

And by this article the Choctaws and Chickasaws leased to the United States the district known to this case as the leased district of which the Wichita Reservation is a part.

Negotiations which resulted in the treaty of 1855 began between the Choctaw delegates and the Secretary of the Interior about April 1, 1854. In a letter dated July 11, 1854, the Choctaw delegates announced that their country extended west to the source of the Canadian, and they threatened to take possession of that portion which they claimed lay west of the one hundredth meridian. The reply of the Secretary stated that he refrained from noticing some expressions in the Choctaw letter because he did not doubt they were used "without due reflection," but no specific answer was made to the claim of the Choctaws respecting the extent of their territory. About the 1st February, 1855, pending the negotiations, Robert L. Neighbors, an Indian agent for Texas, suggested the propriety

of negotiating with the Choctaw delegates for a tract of land lying on the east side of Red River "for the colonization of the Wichita Indians and such other prairie Indians as may be convenient to that location." (Sen. Ex. Doc. No. 13, Forty-eighth Cong., first sess., p. 15.) This suggestion impressed the Government, and accordingly the delegates were
887 asked their terms for land to be used for the purposes indicated. They said they would take $400,000 for the lease of their country west of the ninety-ninth meridian for the purpose named. The Secretary of the Interior on being informed of this gave instructions to the Indian Commissioner as to the proposed lease, stating that, notwithstanding the claim of the Choctaws to the country west of the one hundredth meridian was regarded by the Department as without foundation in law or equity, yet further trouble might be prevented in regard to it by inserting an article in the convention then about to be held requiring the Choctaws to relinquish and abandon all right or claim to the land described. On being asked the terms upon which they would agree, the Chickasaws consenting, to lease the country between 98° and 100° and the Red and Canadian rivers for the permanent settlement of the Wichita and other bands of Indians, with an understanding that the Choctaws should relinquish and quitclaim in favor of the United States whatever interest they had in the country lying west of the one hundredth degree of west longitude, the Choctaw delegates replied that for the lease alone they would want $600,000, but $800,000 for the lease and relinquishment together, i. e., $400,000 for each. The Indian Commissioner then proposed that, "If the Choctaws will propose to lease to the United States the territory west of 98° and east of 100° west longitude, the Chickasaws assenting, and couple with it a relinquishment of all claim west of 100° west longitude, the Government will agree to pay them $600,000." (Sen. Ex. Doc. No. 13, Forty-eighth Cong., first session, p. 15; Choc. Nat. v. U. S., 1292–1295.) This was accepted and the treaty resulted. The Chickasaws agreed to take $200,000 for the lease of their interest in the country between 98° and 100°, and this agreement was incorporated in the treaty.

It is earnestly contended by the defendants that the Choctaws had no real claim to any lands west of the one hundredth meridian because the treaty of 1820 had given them no such lands, but even if it had been afterwards believed to have done so such grant had become void by the subsequent Dancing Rabbit Creek treaty and because of the intervening cession to Spain.

Two of the calls of the conveyance of October 18, 1820, to the Choctaw Nation are for natural objects, namely: First, the source of the Canadian River, and, second, the Red River; a third call is for the course due south to the Red River, connecting the two streams. This course, being due south from the source of the Canadian, is inconsistent with the other two calls, because the source of the Canadian is farther west than that of the Red River by several degrees and far enough west of the one hundredth meridian, if fractional townships are included, to amount to over 12,000 square miles or 8,225,280 acres of land.

The evidence of the circumstances under which the treaty of 1820 was made, it is claimed, is such as to show that neither party thereto intended that any land west of the one hundredth meridian should be included in

the cession, and therefore no such land was included. Maps are introduced to prove that the parties to the Quapaw treaty of 1818 intended to fix the western boundary of the Quapaw cession on or near the one hundredth meridian, because by those maps the source of the Canadian was located in that degree of west longitude, and it is asserted that they were the only maps published prior to 1820 which located the
888 cource of the Canadian. By the map of Arrowsmith its source was fixed on the meridian of 97° 5′, by that of Pinkerton at 97° 15′, by that of Melish at 99° 45′, by that of Pike at 100° 18′, and by that of Darby at 99° 9′.

While it may be true that no map published prior to 1820 delineated the Canadian River, by that name, with its source west of the one hundreth meridian, yet there were maps in existence which did in fact delineate the stream subsequently known as the Canadian, with its source west of the one hundredth meridian. (Map of De l'Isle, De l'Isle's Atlas Nouveau, vol. 1, No. 5; Vol. 2, No. 28; Boehme's map, published at Amsterdam in 1746; American Maps, vol. 1, No. 18.)

During the period commencing in 1805 and ending in 1821 there are evidences that some of these maps were used by the United States in the negotiations with Spain, at different times, preceding the treaty with that country which resulted in an exchange of the land between the Canadian and Red rivers, west of the one hundredth meridian, for Florida, then owned by Spain.

Among the proofs of the title of the United States to all the land between the Mississippi and the Rio Grande del Norte, watered by rivers flowing into the Gulf of Mexico or the river Mississippi, are the maps last mentioned. They were used by Secretary Madison, by Ministers Monroe and Pinckney, by Secretary Monroe, and by Secretary Adams, and as later geographical explorations gave to the world the absolute information that the true source of the Canadian was on the meridian at 104° 30′ west longitude, we think the evidence sufficiently clear to conclude that the possessions of the United States covered the territory ceded to the Choctaw Nation by the treaty of 1820.

As to the understanding and intention of the parties to the treaty of 1820 and that of 1818 respecting the source of the Canadian and the western boundary of the cessions named in those treaties the evidence discloses but little. We know, however, that in the year 1885 France became the owner of the province of Louisiana, which included all the lands west of the Mississippi and east of the Rio Bravo, between rivers emptying into the Mississippi, or the Gulf of Mexico. This province was ceded, in its full extent, by France to Spain, November 3, 1762. It was retroceded, in its entirety, to France, October 1, 1800. France made the cession to the United States, April 30, 1803.

When the United States actually sold the western part of the province of Louisiana, including all the land west of the one hundredth meridian, to the Spanish King, the treaty with the Choctaws had been closed. But the treaty with Spain which gave to that country the western part of the province of Louisiana had been signed February 22, 1819, and approved by the Senate within two days thereafter. The King of Spain refusing to ratify, the treaty expired by its own limitation August 22, 1819. After further negotiations the Spanish King ratified the treaty October 24, 1820.

Upon its presentation to this Government the Senate ratified and the President approved the treaty February 19, 1821. Thus over one month had elapsed after the Choctaws had acquired title by the ratification of its treaty when by another act of the Government Spain obtained title to the same territory.

There is no evidence that pending the Choctaw treaty the United States disclosed to the people of that nation any purpose to sell the land
889 to a foreign power or that negotiations had been resumed for the sale after the rejection of the treaty which proposed to convey it to Spain.

On July 30, 1820, Maj. Stephen H. Long, of the Topographical Engineers, in command of a detachment of a small exploring party which had been sent out by the Secretary of War in 1819 to explore the Mississippi, Missouri, and navigable tributaries, reached a small stream which he believed to be the Red River. Following along near it about 800 miles (by the windings of the stream about 1,000 miles), he reached its confluence with the Arkansas River on September 10, when he discovered that the stream was the Canadian River. Reaching Belle Point (Fort Smith) on September 13, 1820, he communicated with the Secretary of War the last of a series of brief reports of his journeys, in which he substantially reported that the source of the Canadian was in the neighborhood of the one hundred and fourth meridian. (Am. State Papers, Ind. Affs., vol. 2, 335–339; Rec., 745; Long's Expedition, vol. 2, pp. 58–168.)

This report of Major Long reached the War Department in November, 1820. He himself left Belle Point on September 21, reached Cape Girardeau on October 8, went on to or toward St. Louis, but was taken ill on the way, returned to Cape Girardeau toward the end of the month, being still in ill health, and proceeded to Washington. On November 24, 1820, orders were addressed to him at Washington directing him to go to Philadelphia, and as soon as practicable furnish a report of the country traversed by his expedition, with a map. This he ultimately did, the report bearing date Philadelphia, February 20, 1821. (Long's Expedition, vol. 2, pp. 264, 284, 321, 324.)

If Long's letter was received before November 8, 1820, it was in possession of the Government two months before the ratification of the treaty with the Choctaws. If received on the last day of November, it was more than a month before. No matter what time in November the letter was received, the Government had knowledge before the ratification of the treaty that the source of the Canadian was far west of the one hundredth meridian. The presumption must be that the treaty-making powers had this knowledge.

There is no proof that in the negotiation or in the ratification of the Quapaw treaty either the Quapaws or the United States used any maps at all or considered the matter of longitude. When the Choctaw treaty of 1820 came to be negotiated by Generals Jackson and Hinds for the United States at the Choctaw treaty ground, October 13, 1820, the chiefs and headmen of the tribe were told that the limits of their new country "will extend from the Arkansas River, where the Cherokee line begins, south to the Red River and west to the head source of the Arkansas River." When the treaty, as it was signed five days later, was forwarded

it was accompanied by an official report of Generals Jackson and Hinds to the Secretary of War, under date of October 19–21, 1820, in which they stated:

"We have the pleasure to inform you that on yesterday we concluded and signed a treaty with the Choctaw Nation of Indians, by which the United States have obtained a cession of about six millions of acres of land, in exchange for the country between the Arkansas and Red rivers, beginning on the Arkansas where the lower line of the Cherokee boundary strikes the same; thence up the Arkansas River to the Canadian Fork; thence up the same to its source; thence due south to Red River; thence down Red River to a point 3 miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning. From an examination of the map you will find that Little River is about 60 miles above the Great Raft on Red River, and that we have located the Choctaws as high up the same as practicable." (Am. State Papers, Ind. Affs., vol. 11, 241.)

If calls for natural objects control courses and distances in the case at bar, then, on the principle declared in Preston's Heirs v. Bowmar (6 Wheat., 580) and Newsom v. Pryor (7 Wheat., 7), the western boundary of the ceded territory was on a right line drawn from the source of the Canadian (104° 30′ W.) to the source of the Red River (103° 30′ W.). If the maps relied on by the defendants constitute a part of the treaties, then the matter of longitude must govern as shown by the maps. Under these last conditions the western boundary would not only be restricted to the one hundredth meridian, but by some of the maps this boundary would be east of the one hundredth meridian far enough to exclude from the original Choctaw cession the whole of the leased district. This would be the case on the meridian fixed by Arrowsmith, as well as that fixed by Pinkerton.

Taking the proof all together, we do not think it was the intention to place the western boundary at the one hundredth meridian. It does not appear, except inferentially, that the commissioners made use of any of the maps, nor does it appear, even by inference, that these maps were exhibited to the Choctaws. The minutes of the commissioners show that they reduced to writing the propositions submitted respecting the extent of country the tribe was to receive, and these propositions, and the action of the parties with respect to them, negative the belief that longitudes or meridians were mentioned. Natural calls being matters easily understood by ignorant and untutored Indians, and longitudes and meridians not being terms they would likely comprehend, we do not think, from all that is before us on this subject, that the Choctaws understood the United States to cede not what was actually ceded in proper form but what was not ceded. It is certain that the Government was in possession of information before the ratification of the treaty that the source of the Canadian was far to the west of the one hundredth meridian as delineated by the earlier maps, and in the absence of proof it can not be assumed that the treaty was ratified with the knowledge that the boundaries fell short of the actual source of that river.

There is as much reason to say that the maps which excluded from the cession much of the country now occupied by the Chickasaws were used

as to say that the other maps then in existence delineating the source of the Canadian about the one hundredth meridian were made the basis of the treaty boundaries. The use of all the maps involve contradictions and destroy the value of the argument. Upon the question of intention we think it more probable that the Government originally intended to acquire from the Quapaws, and also intended to grant to the Choctaws, all the territory west of the one hundredth meridian to the dominions of Spain.

The ratification of the Spanish treaty which fixed the boundary of the United States on the line of the one hundredth meridian was subsequent to the ratification of the treaty with the Choctaws which gave to those people the land that extended to the source of the Canadian. With
891 the ratification of the Spanish treaty, however, such title as had been granted to the Choctaws became extinguished. Ratification related back to the time of the signing of the treaty as between the United States and Spain. (Vattel, B. 4, C. 2, sec. 22; Davis v. Police Jury, 9 How., 280, 289; Haver v. Yaker, 9 Wall., 32, 34.) The treaty with Spain being binding on the United States from the date of the signing thereof, the treaty rights of domestic Indians to the land itself were lost, but the right to compensation for the value of the land remained with the Choctaws as against the Government which first gave, and then took from them, the land.

But the questions relating to the extent of the original cession to the Choctaws and the intention of our Government in ceding land to them which at the time we were trying to sell to Spain in exchange for Florida, as well as the matter of the inconsistency of the treaty of 1830 with that of 1820, and the intermediate action of the Government in actually ceding the land west of the one hundredth meridian to Spain, can only be material now in determining what amount of money was ultimately paid by the United States for the leased district. No relief is sought by the nation on account of any early claim to country which they failed to get. Whatever interest the Choctaws had in the land ceded to Spain after its apparent cession to them was settled by the treaty of 1855. Having treated the Choctaw quit claim to the territory west of the one hundredth meridian as the relinquishment of a substantial right, the Government is not in a position to raise that question anew and assert that the treaty of 1820 was made void by that of 1830, so as to deprive the Choctaws of the right of compensation to land ceded in 1820 but not ceded in 1830. Nor do we understand that the Government has denied the effect of its action in recognizing the claim of the Choctaws to compensation since its acceptance of the offers to relinquish the claim until this suit. The probabilities are that when this question arose the parties viewed the matter as one best kept out of the courts for their respective interests, and, in the doubts which each had as to their rights, compromised the difference in the manner set forth, from which resulted the agreement of 1855.

While we have gone far enough into the question to say that by the cession of 1820 the Choctaws acquired land beyond the one hundredth meridian, we decline to enter that field of discussion respecting the alleged surrender by them, under the terms of the second grant, of what

they had acquired by the guaranties of the first cession, because unnecessary. The extent of our opinion is for the purpose of showing a basis for the claim preferred by the Choctaws in 1855; but whether their claim was dealt with as one of strict legal right, or made to rest upon moral considerations alone, it was clearly recognized by the language of the treaty, which recited a consideration for the relinquishment of a certain tract and the lease of another.

In the Net Proceeds Case it was said that the treaty of 1830 was evidently and purposely executed not so much to secure to the Indians the rights for which they had stipulated as to effectuate the policy of their removal. (Choctaw Nation *v.* United States, 119 U. S., 38.) So, if the treaty of 1830 annulled that of 1820, we have the spectacle of the United States acquiring ten million acres of land in Mississippi for nothing and also extinguishing a title to several million acres west of the Mississippi without the payment of anything.

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This treaty of 1855 was the result, in part, of the necessities of the Government in locating tribes on convenient reservations. The colonization of the Wichita and Prairie Indians, however, seems to have been nowhere suggested before the special Indian agent for Texas communicated to the Commissioner of Indian Affairs the propriety of opening negotiations with the Choctaw delegation, as stated. The delegates were then in Washington, and the land designated as desirable was a tract of country lying on the east side of the Red River, known as Cache Creek, near Wichita Mountains. (Sen. Ex. Doc. No. 13, 48th Cong., 1st sess., p. 15.) When the treaty came to be made, the preamble expressed the desire of the Government for the Choctaws to relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichitas and certain other tribes or bands of Indians. The preamble further recited a willingness on the part of the Choctaws and Chickasaws to lease, on reasonable terms, to the United States that portion of their common territory west of the ninety-eighth degree of west longitude. When the transaction was consummated the United States held, free from any other claim of the Choctaws, all of the land west of the one hundredth degree, and it held a perpetual lease from both the Choctaw and Chickasaw nations to that portion of their common territory west of the ninety-eighth degree, subject to the right of Choctaw and Chickasaw settlement as owners of the land.

The lease did not secure, or purport to secure, to the United States the right to locate Indians generally upon the leased land. The restriction imposed excluded all the Indians of New Mexico and all whose usual ranges were then north of the Arkansas River and whose permanent locations were north of the Canadian.

The defendant Indians were placed on the leased land in 1859.

It is argued for the Government that the lease provided for in the treaty of 1855 was in fact not a lease, and that the use of the term "lease" was really a misnomer; that certain parts of the agreement indicate that the Choctaws and Chickasaws permanently parted with their title, and that the land was in fact sold for a particular purpose, but none the less sold—that is, sold in trust.

The land was not sold at all. The United States negotiated for a lease, and though perpetual in character it was none the less a lease.

If anything was needed at the time to continue the rights of the Choctaws and Chickasaws as owners, subject to permanent occupation by certain other tribes as tenants under the control of the United States, the first article of the treaty is a sufficient answer to any doubt cast upon the title of the lessors.

Again, it is argued there was no term fixed. This is true, but the lease rested upon a rental value. The instrument itself does not express what that rental value was, and no apportionment was made of the amount paid for the lease and the amount given for the other land, but we
895 know the character of the preceding negotiations. Certain Indians to whom the lessors did not object could come on, but other Indians to whom they did object could not. The leased territory was to remain open to settlement by Choctaws and Chickasaws, as before, and the jurisdiction of the Choctaw Nation was to remain as agreed upon at or immediately after the time of the severance of the government of that tribe from that of the Chickasaws. (Arts. 1, 2, and 3, Tr. 1855.) The land was inalienable without the consent of the lessors, which implied a future sale for their use. The lease must, therefore, be viewed as a mere permit, the premises remaining Choctaw and Chickasaw country, subject to special uses by the Government for other Indians.

Under their political control and government the Choctaws fixed four boundaries for the districts of their country. The Hotubbee district was embraced within the limits of the ninety-eighth and *and* one hundredth degrees of west longitude and between the Red and Canadian rivers, known as "lease land." (Choc. Cons., 1861, 7, 8, and 13; Choc. Laws, 1869; Art. 3, Tr. of 1855.) Under their constitutions the Supreme Court had jurisdiction of the other three districts until Hotubbee district should be duly organized and officers elected therein. (Art. 4, sec. 2, Jurisdic. Dept.) Under the articles, which include general provisions of the constitution, appears the following:

"Until Hotubbee district shall be duly organized, the principal chief of the Choctaw Nation shall exercise such authority over the citizens of this nation living in that district as he may deem expedient for the protection of person, life, and property." (Art. 7, sec. 1, Genl. Provs.)

This assumption of Choctaw exercise of government was never objected to by the United States.

The rights of the Choctaws and Chickasaws as between themselves had been fixed by agreement, with the consent of the Government, in the proportion to three-fourths to the former and one-fourth to the latter tribe in all land to which either tribe could lay claim. The western boundary of the Chickasaws was the ninety-eighth degree. Their eastern boundary, which is the western boundary of the Choctaws, was so located as to embrace in their country 4,650,935 acres. East of them were the lands of the Choctaws, 6,668,000 acres. West of them is the leased district, 7,713,239 acres. The total acreage aggregated 19,052,174. One-fourth of this closely approximates the quantity embraced in the Chickasaw boundaries, entitling the Choctaws to 14,289,136. Thus, the leased district must be embraced to get that number of acres. Without the leased district they would have but 6,688,000 acres. This proportion would make 6 to 4 instead of 3 to 1. If the Government's theory be correct, the Choctaws would be wanting in more than 7,000,000 acres of their

jurisdiction, as well as that much of their pro rata part of land, for no consideration at all. Such a result does not appear to be sustained by any agreement made at any time between the nations or the United States.

Early after the beginning of hostilities between the States the slave-holding tribes of the Southwest made common cause with the South. There were individual Indians in the Territory connected with these nations who adhered to the United States throughout the war, but the large majority of Choctaws and Chickasaws did not do so. The Choctaws and Chickasaws entered into an alliance, offensive and defensive,
894 with the Government of the Confederate States July 12, 1861. (1 Confed. Stats., 311–331.) The Creeks, Cherokees, Seminoles, and other tribes made similar treaties with the Confederate Government, but it is not material to notice the extent of any of them. Sufficient it is to say that hostilities were carried on under them against the United States until June, 1865. Many of the wild tribes who had in the great struggle taken up arms against the Government remained in hostility for some time after the surrender of the Southern forces. The history and extent of the operations of those Indians are set forth in various decisions of this court, and are mentioned to show that when the Government resumed negotiations with the tribal organizations of civilized Indians some of the border tribes continued to create a great deal of trouble for the Government. (Litchfield v. U. S. et al., 32 C. Cls. R., 585.) And this state of affairs produced an era of treaty and concession with the hostiles as far as the United States could approach them.

The importance of preserving certain country for the use of Indians alone was greatly felt by the Government as the civil war began to close. Undoubtedly the Government had in view in the treaties made subsequent to the close of the war the greater peace and security of the Indian country and of all persons put there by Government authority. The public domain contained millions of acres of unoccupied land, and no purpose was expressed by any one in authority for the Government to buy more land for public uses.

To secure homes for such tribes as it might be expedient to remove, it was officially recommended that in all treaties thereafter to be made with the former owners of the country terms should be insisted upon, and, if need be, enforced, for the purpose of locating nonreservation Indians. (Rep. Comr. Ind. Affs. for 1865, p. 34.) This report recognized (what the commissioners for the Government subsequently acted upon) the existence of rights which the tribes had previously acquired by treaty. Although the act of August, 1862 (12 Stats., 528), conferred power upon the President to abrogate treaties with hostile tribes, this authority was never exercised with respect to the treaties existing between the United States and the Choctaws and Chickasaws, nor was it generally exercised as to other Indians. The results vindicated not only the beneficence but the wisdom of the policy of the President in refusing to declare the forfeitures, inasmuch as that policy tended to disarm the hostiles and bring them in subjection to the Government at a time when its military strength was sorely tried. The act clothed the President with discretion to declare the treaties abrogated if the same could be done consistently with good faith and legal and national obligations. Whatever the motive in permitting the obligations of Indian treaties to remain in effect, the fact can

not be obscured that the close of the war found every obligation with the civilized tribes unimpaired, just as if they had not taken up arms against the Government. (Rep. 262, pt. 2, H. R., 50th Cong., 1st sess.)

When the policy of the Government to locate other tribes in the Indian Territory without reference to their previous habitations became manifest another problem presented itself. There were several thousand freedmen there who had formerly been held as slaves. They were without property or rights of property in the soil, and, being dependent upon Indian protection and living upon Indian land, the Government
895 undertook to supervise the interests of the blacks and at the same time to make some small provision for them because of their precarious situation.

The commission apppointed to carry out the objects of the Government met a number of Indian delegates in council at Fort Smith, Ark., September 8, 1865. Besides the representatives of the Five Civilized Tribes, there were present representatives of the Osages, Senecas, Quapaws, Wyandottes, Wichitas, and Comanches. (Rep. Commr. Ind. Affs. for 1865.)

At the beginning of the conference there were present only loyal Choctaws and Chickasaws. President Cooley made a statement, from which it appears:

"Immediately upon the opening of proceedings the tribes were informed generally of the object for which the commission had come to them; that they, for the most part as tribes, had, by violating their treaties by making treaties with the so-called Confederate States, forfeited all rights under them, and must be considered as at the mercy of the Government; that there was every disposition to treat them leniently, and above all a determination to recognize in a signal manner the loyalty of those who had fought upon the side of the Government and endured great sufferings on its behalf. On the next day the delegates were informed that the commissioners were empowered to enter into treaties with the several tribes upon the basis of the proposition submitted."

The propositions were under consideration for several days. The loyal Choctaws and Chickasaws were divided as to the action to be taken, the Chickasaws declaring that they were not prepared to reply to some of the propositions, while the Choctaws stated that they were willing to accept every proposition but the seventh. As to that the answer of the Choctaws and Chickasaws was substantially the same. Both desired its modification so as to provide that no person of African descent, except their former slaves, or free persons of color, who were then or had been residents of the Territory, should be permitted to reside therein unless formally incorporated with the tribe according to the usages of the band. Meantime, regular delegates from the Choctaw and Chickasaw nations, with authority to act, appeared. (Act Sept. 6, 1865, Choc. Laws. ed. 1869, p. 405.) The preliminary treaty of peace, which the council had been informed was essential to the adjustment of any and all questions under any old treaty, had been signed by the loyal Choctaws and Chickasaws before the regular delegates came. The day after the appearance of the authorized delegates the treaty of peace was signed by them, and Commissioners Sells and Parker were appointed on behalf of the United States to confer with committees of the Choctaws and Chickasaws in relation to additional treaties.

On the last day of the council the Choctaw and Chickasaw delegates were informed that an additional treaty for their consideration was ready.

Just before final adjournment Commissioner Parker announced that the commission had considered certain modifications of the proposed treaty which had been submitted by the Choctaws, but would decline to entertain the modifications suggested.

There is no proof as to what the modifications suggested were, but the draft of the unsigned treaty is in existence (Choc. Laws, ed. of 1869, p. 410), and in the report of Commissioner Cooley we have a statement concerning this treaty. (Rep. of 1865, p. 36.) This report shows that a treaty was agreed upon with the Choctaws and Chickasaws upon the basis of the seven propositions mentioned, and that the tribes agreed to
896 the opening of the leased lands to the settlement of any tribe whom the Government of the United States might desire to place thereon, and to the cession of one-third of their remaining area for the same purposes, the United States to restore the Choctaws and Chickasaws to their rights forfeited by the rebellion.

Following is a copy of the unsigned treaty:

"Articles of agreement and convention between the United States and the Choctaw and Chickasaw tribes of Indians, made and concluded at Fort Smith, Arkansas, the day of September, A. D. 1865, by D. N. Cooley, Elijah Sells, Ely S. Parker, and Thomas Wistar, commissioners on the part of the United States, and the delegates of the Choctaw and Chickasaw tribes of Indians, signing this instrument.

"Art. 1. Peace and friendship are hereby firmly established between all the citizens of the United States and all the individuals comprising the aforesaid tribes; and all the friendly relations that existed between them before the rebellion shall be and the same are hereby renewed.

"Art. 2. The Choctaw and Chickasaw tribes of Indians do hereby bind themselves to use their influence, and whenever called upon by the Government to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians of the Territory, and with the United States.

"Art. 3. The Choctaw and Chickasaw tribes of Indians hereby admit that the institution of slavery is abolished, and that slavery or involuntary servitude shall never hereafter exist in either tribe, except in punishment of crime, whereof the party shall have been duly convicted, and they promise and agree that measures shall be immediately taken by their respective national councils to properly provide for such emancipated slaves as may have belonged to the members of the respective tribes; such provision to be subject to the approval of the President of the United States.

"Art. 4. The Choctaw and Chickasaw tribes of Indians hereby agree to open their country to the settlement of friendly Indians from Kansas and elsewhere, upon such terms as may hereafter be agreed upon by the respective parties and approved by the Government, and the Government may settle such friendly Indians on a portion of said Territory east of the ninety-eighth degree of west longitude, not necessary for the use of said Choctaw and Chickasaw tribes, as it may desire, not exceeding one-third of the whole remaining Territory, for a fair and equitable consideration, to be fixed by the Government.

"Art. 5. The Choctaw and Chickasaw tribes agree to a modification of the 9th article of the treaty concluded at the city of Washington, the 22nd day of June, A. D. 1855, by which they agree that all that portion of their common territory west of the ninety-eighth degree west longitude, leased to the United States, may be used for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate thereon, without exception or restriction as to the character of the tribes.

"Art. 6. The Choctaw and Chickasaw tribes of Indians promise and agree to submit and recommend, at the first meeting of their respective general councils, the adoption of the plan proposed in the Senate bill 459, 38th Congress, 2d session, to provide for the consolidation of the Indian tribes, and to establish civil government in the Indian Territory; it being understood to be the settled policy of the Government of the United States that all the nations and tribes in the Indian Territory be formed into one consolidated government, after the plan proposed in the bill above referred to, adopted by the United States Senate, 1865, the Government of the United States reserving said right.

"Art. 7. The United States, in the event of the adoption by the Choctaw, Chickasaw, and other Indian tribes of the Government proposed to be established in the Indian Territory referred to in the preceding article, promise and agree that no white person except officers, agents, and employees of the Government, and of any internal improvement authorized by the Government, will be permitted to go into and settle in said Territory, unless formally incorporated and naturalized into one of the resident tribes, according to their laws, customs, and usages.

"Art. 8. The Choctaw and Chickasaw tribes of Indians, anxious for the restoration and preservation of kind and friendly feelings among themselves, do hereby declare a general amnesty of all past offences, either against their government or the Government of the United States, and no Indian or Indians shall be proscribed, or any act of forfeiture or confiscation passed against those who may have remained friendly and loyal to the United States, but they shall all enjoy equal privileges with other members of said tribes.

"Art. 9. The United States hereby promise and agree to restore the Choctaw and Chickasaw tribes of Indians to all their rights and privileges in lands and annuities that they were possessed of and entitled to, and they shall be applicable to the same objects as existed at the
897 breaking out of the rebellion, except such part or parts of annuities and moneys as have been expended by the President in providing for the relief of destitute Indians who were reduced to want on account of their friendship to the Government of the United States, which shall not be refunded.

"Art. 10. It is hereby mutually agreed that all of the provisions of the treaty of June 22d, 1855, between the United States and the Choctaw and Chickasaw tribes of Indians not inconsistent with the foregoing articles are hereby adopted and made a part of this instrument.

"Art. 11. The Choctaw and Chickasaw tribes of Indians expressly agree that any amendment to this treaty which the Senate of the United States may make shall be taken and held as a part of the same and as

binding in every respect as if it had, after being made, been formally su
mitted to and ratified by such parties."

(Laws of the Choctaw Nation, p. 410 et seq.)

The council adjourned subject to the call of the Secretary of the Interi

Although the foregoing treaty was never ultimately executed, it w
reported by the Indian Commissioner to have been agreed upon, subje
to approval of the Choctaw and Chickasaw councils, and then to be sign
in Washington. (Rep. of Sec. of Int. for 1865, p. 204.) The volume
the testimony shows, however, that it was not agreed upon. The India
present disclaimed any authority to enter into formal agreement about an
thing but the termination of hostilities, and asked time to report to th
people, stating that when they did so commissioners would be appointed
make further treaty. That was the final understanding, probably for t
reason given by the president of the commission that there could be
satisfactory representation of the Indians until the differences between t
loyal and disloyal members were healed. (Rep. of Commrs., p. 35.)

The draft of the unsigned treaty and the ultimatum contained in t
seven propositions submitted by the commissioners were given to the repr
sentatives of the petitioners to be submitted to their people. It was stat
at the close of the address of President Cooley, on the day that the prop
sitions were made known, that the agents would be supplied with print
copies of the address and would be requested to go with an interpreter to th
respective tribes for the purpose of fully explaining what was said there
This language evidently contemplated that the commissioners themselv
did not expect to conclude any agreement at that time respecting the la
of the Choctaws and Chickasaws. From all that was said and done it
clear then that no absolute agreement was entered into between the parti
respecting the land, but every suggestion made contemplated the acquir
ment of land at some future early date for one and the same purpose, a
that purpose was the settlement of Indians on the lands to be acquir
without opening any of it to white occupation under the general land la
of the United States, but giving the Choctaw and Chickasaw Indian free
men the privilege of locating there also, and leaving the Choctaw a
Chickasaw interest in the land otherwise unimpaired. The differenc
between the respective parties related only to the provisions respecti
freedmen and not to the nature of the title to be granted or acquired.

Respecting the fifth of the seven propositions first submitted, the arg
ments of counsel proceed upon different versions of its language. A
examination shows the following form to have been stated by D. N. Coole
Commissioner of Indian Affairs, as follows:

"A part of the Indian country to be set apart to be purchased for th
use of such Indians, from Kansas or elsewhere, as the Government ma
desire to colonize therein." (Annual Rep., 1865, p. 34; House Ex. Do
1, 39th Cong., 1st sess., vol. 2, p. 202.)

898 Accompanying the report of the Indian Commissioner is th
report of D. N. Cooley, as president of the Southern Treaty Com
mission, and also an official report of the proceedings of the council, i
both of which appears the statement that "the treaties must contain sub
stantially the following stipulations." The form of the fifth is then give
as follows:

"A portion of the lands hitherto owned and occupied by you must b
set apart for the friendly tribes now in Kansas and elsewhere, on suc

terms as may be agreed upon by the parties and approved by the Government, or such as may be fixed by the Government." (Rep. president Southern Treaty Com., pp. 298, 319.)

The language of the report would imply that no stenographic notes were taken during the sitting of the council.

The draft of the unsigned treaty followed the submission of the seven propositions. In that the commissioners for the United States evidently undertook to express their meaning of the propositions previously submitted. If the contention of the defendants be correct as to the precise language used, the fifth proposition was a demand that the treaty was to be so framed with regaad to the lands that a portion of them "must be set apart for friendly tribes." The fifth article of the unsigned treaty provides that all the lands of the leased district may be used by the United States, "without exception or restriction as to the character of the tribes." Out of the fifth proposition or demand then grew the treaty of the next season, and as the commissioners submitting the ultimatum understood it, doubtless the Choctaws and Chickasaws also understood it.

Commissioners were appointed by the Choctaw and Chickasaw legislatures to proceed to Washington, the two acts of the Choctaw government having been approved October 17 and 18, 1865, respectively, and the one act for the same purpose passed by the Chickasaw legislature was approved November 18, 1865. (Cons. and Laws Choc. Nat., 1869, p. 420; Cons., Laws, and Treaties Chicks., Fort Smith, Ark., 1867, p. 100.) The authority of the five Choctaw commissioners was limited to "the purpose of completing negotiations with the Government of the United States, commenced at Fort Smith, Arkansas, on the 15th September, A. D. 1865, and any agreement or stipulation which the commissioners should enter into with the United States was not to be binding until ratified by the general council of the Choctaw Nation." The authority of the three Chickasaw commissioners was declared to be "with full and efficient powers to reconstruct or enter into new treaties or conveyances with the United States of America, or any authorized agents thereof, necessary, in their judgment, to obtain full guaranties and securities of all the rights, interests, or claims held by the Chickasaw Nation, or any individual member thereof, under former treaty stipulations with the Government of the United States, whereby the happiness and interests of the Chickasaw people may be advanced." Some months after the treaty was executed the two Indian governments qualified their ratification as hereinafter shown.

Between the adjournment of the council assembled at Fort Smith and the consummation of the agreement at Washington nothing relating to the terms of the treaty is disclosed. In the negotiations preliminary to the signing of the treaty John H. B. Latrobe, of Baltimore, represented the commissioners of the two Indian governments, and his name appears a subscribing witness to the document.

899 There is nothing in the record to indicate that the Choctaws and Chickasaws had any information as to the purpose of the Government except as embraced in the fifth proposition and the fifth article of the unsigned treaty submitted at Fort Smith. These gave the Indians to understand that the purpose was only to extend the rights of the United States in the land beyond the treaty of 1855, and this purpose was also understood by the United States.

Passing the question of the right of the Government as the guardian to change its purpose and take the land for such consideration as it saw fit to give, the record discloses nothing to show the exercise of the power of the Government to acquire the land upon terms different from those first submitted except such as may be derived from the ceding clause of the treaty itself. Every presumption, then, must be indulged in case of doubt that in consummating the treaty the original purpose was intended to be carried out, and that when the treaty was actually executed the agents of the Government supposed they were embodying in the agreement the objects announced by the commissioners at Fort Smith for the cession of the land.

It is certain that the delegates who signed the treaty on the part of the nations came to Washington to give effect to the ultimatum previously submitted to the Choctaws and Chickasaws, and that the legislatures which clothed them with authority to act were without knowledge of any change of purpose on the part of the United States.

Three of the same commissioners who submitted the seven propositions at Fort Smith and prepared the unsigned treaty for the United States also framed the treaty of 1866. D. N. Cooley, president of the council and the head of the Bureau of Indian Affairs, who had been active in arranging the preliminary terms of the treaty, consummated the agreement, and did so not merely with one tribe, but with all who had lands which the Government desired to use for the purpose stated to the nations whose interests are now before us. Mr. Cooley reported that the first treaty was made with the Seminoles and that the next treaty in this series was made with the confederate nations of Choctaws and Chickasaws, stating that in all of them "four principal points came up for settlement, to wit, * * * (fourth) cession of lands by the several tribes, to be used for the settlement thereon of Indians whom it is in contemplation to remove from Kansas." All were based on the same points of settlement and treated as a series of treaties. (Annual Rep. Com. Ind. Affrs., 1866.)

The Choctaw council, by an act approved December 21, 1866, enacted "that the propositions contained in the third and eighth articles of said treaty are hereby deferred until the next regular session of the general council." (Laws Choc. Na., ed. 1869, p. 450.) The Chickasaw legislature confirmed the treaty and consented to sectionizing the land and alloting the same in severalty, by an act approved November 9, 1866, but provided:

"SEC. 3. Be it further enacted, That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named for the use and benefit of the Chickasaws, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby, declared to be the unanimous consent of the Chickasaw legislature, that the United States shall
900 keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes. And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the third article of the treaty of April 28, 1866." (Cons. Laws and Tr. of Chickasaws, 1876.)

For conferring the privileges and rights of property mentioned in article 3 on some 4,500 blacks, 10,000 Choctaws would have received $225,000; but for doing the same thing for 3,700 black residents among them, the Chickasaws would have got only $75,000. This was a minority of black population in the one case and a majority in the other, but whatever the motive underlying the action of the nations, neither passed the necessary laws to receive the consideration within the two years.

The Chickasaws have never attempted to pass any such laws. Neither have their freedmen been removed. But on May 21, 1883, the Choctaws passed laws in regard to their freedmen (Choc. Laws, 1894, p. 335), following which an act of Congress approved March 3, 1885 (23 Stats., 366), appropriated to them $52,125, net balance estimated to be due them as their proportional part of the money named in the treaty of 1866. All sums paid to the Choctaws and to the Chickasaws were received under article 46, being made, according to an official report, "to the Choctaw Nation or the Chickasaw Nation, or to persons of African descent formerly held in slavery among said nations or their descendants." (Rept. Comr. of Ind. Affrs., 1897, Rec., 763; House Rept. 3147, 51st Cong., 1st sess., p. 14.) Payments to the Choctaw Nation were as follows:

Appropriation of July 26, 1866 (14 Stats., 259) under forty-sixth article of the treaty		$150,000.00
Appropriation of July 26, 1866, for interest (14 Stats., 259) under same article		11,250.00
Appropriation of April 10, 1869, for interest (16 Stats., 39) under same article		11,250.00
Appropriation of May 17, 1882, for education of freedmen (22 Stats., 72)		7,500.00
Appropriation of March 3, 1885 (23 Stats., 366) to be placed to the credit of the Choctaws on the books of the Treasury, computed as follows:		
Balance of principle due Choctaws	$67,500	
Deduct overpayment of interest, 1867, amounting to	$7,500	
Deduct from same in 1868	7,875	
	15,375	52,125.00
		232,125.00

And to the Chickasaw Nation as follows:

Appropriation of July 26, 1866 (14 Stats., 259), under forty-sixth article of the treaty	$50,000.00
Appropriation of July 26, 1866, for interest (14 Stats., 259), under same article	3,750.00
Appropriation of April 10, 1869, for interest (16 Stats., 39) under same article	3,750.00
Appropriation of May 17, 1882, for education of freedmen (22 Stats., 72)	2,500.00
	60,000.00

In 1888 and subsequent years the Choctaw Nation paid to the Choctaw freedmen, out of the general trust fund of the nation, the sum of $7,300, at the rate of $100 per capita, to those who desired to remove from the Choctaw Reservation.

If the transaction had been between individuals, and especially between guardian and ward, inquiry would at once arise how it came that
901 one of the parties, and that party the ward, should for a consideration of $300,000 part with all interest in nearly 8,000,000 acres of land worth about $8,000,000 (according to the value put by the grantee at the time upon land adjoining the ceded territory) and at the same time bargain to give from other possessions tracts of more than 300,000 acres to get the money, or, failing to yield these tracts to the third persons who by the arrangement were to become the beneficiaries, leave themselves in position to surrender indefinitely land enough for 8,000 people to cultivate besides conferring upon them other rights. But under this treaty neither the integrity of the sovereign nor the good faith of the guardian can be questioned. In looking for the proper objects, then, which we must suppose actuated the sovereign as guardian, the statements and situation of the parties, the amount and value of the grant considered with reference to the consideration, the benefits to be conferred and where they were to go, and the ends sought to be accomplished from all the parties possessed of land, may be considered in determining whether the cession was or was not attended with any underlying trusts or uses.

The cardinal rule for all agreements, whether of private contract or of public treaty, is that the full extent properly implied in the terms used should be given a disposition or the signification thereof be restrained, if it be probable that the parties at the time so understood the language embodied in the written agreement.

The general principle is that treaties shall be liberally construed so as to carry out the apparent intention of the parties to secure equality and reciprocity between them. Thus, under a provision in a treaty between France and the United States which gave to the French the right to hold property in all those States of the Union permitted by the existing laws of the States, it was held that the District of Columbia was one of the "States of the Union" within the meaning of the treaty. (Geoffroy v. Riggs, 133 U. S., 258.)

Again, "subjects" of Spain, as used in a treaty between that country and the United States, has been held to be not merely persons who, by birth or naturalization, owed permanent allegiance to the Spanish Government, but as used in the same sense as the term "citizens" and "inhabitants" when applied to persons owing allegiance to the United States. (The Pizarro, Wheat., 227.)

The familiar rule that treaties between the United States and the Indian tribes must be liberally construed in favor of the Indians was early declared, and all such agreements are attended with this guide for their proper interpretation: That "the language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import as connected with the tenor of the treaty, they should be considered as used only in the latter sense. How the words of the treaty were understood by this unlettered people, rather than their crit-

ical meaning, should form the rule of construction." (Worcester v. Georgia, 6 Pet., 515.)

It is thought by counsel for the defense that the rule quoted is one of relative application, and, although referred to in a late case involving the Choctaw and Chickasaw treaty of 1855, the rule is not at all as applicable to those comparatively educated people as to the totally
902 illiterate Cherokees of 1800. Counsel for the defendant Indians think the analogies of the rule are qualified by certain conditions existing at the time of the execution of the treaty, the two most essential of which, besides the nations being no longer unlettered, being acts of hostility to the Government out of which and because of which existing obligations could be declared forfeited, and next, the relations of the Indians to their former slaves.

Advances in education and learning had undoubtedly been made by the civilized Indians, and they were not so unlettered a people as the Cherokees of 1800. Complainant nations had governments and institutions of their own, and these were carried on with sufficient intelligence to serve the purpose of their creation, in part at least. But though, by these governments, the public peace was fairly well secured, agencies from our own Government were maintained among the nations with power that restricted them to a degree, and our courts exercised jurisdiction over their persons. As nations and as people they were dependent communities at last. Illiteracy largely prevailed, if history be written from truthful sources; and the demoralization incident to the close of a great war must have had its effect upon people who by its results were made more deeply sensible than ever before that they were dependent upon the United States for every personal and political right that they might thereafter enjoy.

If any one thing has been settled in our judicial history, it is that the Indians are the wards of the nation. The relation of guardian and ward between the United States and the Choctaws and Chickasaws existed when their last treaty was executed, and there must be "such an interpretation of their acts as justice and reason demand where power is exerted by the strong over those to whom they owe care and protection."

The language of Chief Justice Marshall in Worcester v. Georgia has been so often and lately applied the rule can not be ignored in the construction of a treaty executed by the claimants a generation ago, whether their acts be considered as the acts of an ignorant people or those of a people helpless and otherwise at a disadvantage. (See The Kansas Indians, 5 Wall., 737, 760; U. S. v. Kagama, 118 ib., 375, 383; Choctaw Nat. v. U. S., 119 ib., 1, 28.)

It is urged that the plain language of the instrument cedes the land for a specific consideration, and the court can not look beyond this language. This would restrict the meaning of the parties to the ceding clause entirely. The intention as gathered from the words must control, and the entire instrument must be examined in order that the real intention may be ascertained. (1 Kent's Com., 174; In re Ross, 140 U. S., 453; U. S. v. Texas, 162 ib., 36.)

Aside from the act which requires that everything deemed necessary by the court to aid it in determining the questions presented and tending to shed light on the claims and equities of the parties, the intent must

be gathered not only from the language of the instrument, but attendant and surrounding circumstances may be resorted to as aids to the ascertainment of the meaning and intent of the parties. Thus, as in the case of the interpretation of a statute the history of the times may be resorted to in aid of the true construction (U. S. v. Union Pacific R. R. Co., 91 U. S., 79), we think for similar causes contemporaneous events
903 may be examined in aid of the interpretation of an Indian treaty as in any law. (Holy Trinity Church v. United States, 143 U. S., 463.)

It is objected generally (1) that propositions (even though conceded to be substantially definite) leading up to the treaty can not be considered to determine the intent, and specially (2) because the objects of the fifth stipulation referring to land for the colonization of Indians were amply provided for in the treaty outside of the clause which cedes the land.

The special objection is not tenable, because the court can not determine whether the fifth stipulation and its objects found expression in the treaty without considering it as evidence for that purpose; but as to the general objection difficulty arises, because we are considering a public treaty and not a private contract.

The rule that courts of equity will open the written contract to let in an equity arising from facts perfectly distinct from the sense and construction of the instrument itself is clear in its application to matters arising out of contract between persons. Pursuant to that rule relief can be had against any deed founded on mistake, and that mistake may be shown by parol proof. (Walden v. Skinner, 101 U. S., 577.)

A deed absolute on its face may be shown to be a mortgage by evidence aliunde the instrument, or an absolute conveyance may be shown to be a conditional deed. (Babcock v. Wyman, 19 How., 289; Boyd v. McLean, 1 John., ch. 582.) In a question where the transaction to be determined was whether it was a sale or a mortgage, and oral evidence was objected to as inadmissible to contradict, vary, or add to the contents of the writing, extraneous evidence has been held admissible upon principle and authority. The language used by the parties can not be qualified or varied; but where the instrument is in form a conveyance but was in fact intended to be a security, it is competent to show by parol evidence what the real transaction was; the object of the parties in giving and receiving the instrument may be considered; and when courts of equity, looking beyond the terms of the instrument, find the real transaction to be one of security and not of sale, effect will be given to the actual contract to prevent fraud or oppression and to promote justice. (Russell v. Southard, 12 How., 139; Hughes v. Edwards, 9 Wheat., 489; Peugh v. Davis, 96 U. S., 336; Brick v. Brick, 98 U. S., 514.)

That the cession under consideration was by treaty does not exclude those means of ascertaining the intention of the parties which have the effect of informing the court of every material fact supposed to govern them when the treaty was executed, if, as appears here, the ceding clause be followed by language embodying such terms and conditions as to raise reasonable doubt of what the parties really intended. The terms submitted by the commissioners for the United States at Fort Smith, showing the qualified character of the title proposed to be acquired, and which the delegates to whom the terms were submitted

were willing to grant, if such terms do show any such thing, are therefore competent to be considered. They are a part of the res gestæ of the transaction which, if explanatory of the objects of the treaty, ought to be considered in common justice, as well as in obedience to the plain command of the statute in this behalf. The act conferring jurisdiction is misleading and delusive if, without the power to direct the court to consider the treaty as a contract and apply the rules which
904 obtain in equity to ascertain its meaning, Congress has shifted the responsibility of reaching the intent of the treaty upon the court. The inquiry being always open to the Indians how they understood their treaty as a contract, it was competent for Congress to direct the consideration of extrinsic facts in explanation of the intent. This includes the examination of matters historically true and all circumstances throwing light upon the intent and the reason and justice of the matter and the uses in this case to which the small consideration was to be put upon its ultimate payment, so that the treaty should not lead to injustice, oppression, or absurd consequence. (Holy Trinity Church v. The United States, supra.)

It is not within the province of a court, either of law or of equity, to consider allegations of fraud or duress in procuring the treaty (Western Cherokees v. United States, 27 C. Cls. R., 1; United States v. Old Settlers, 148 U. S., 466).

But this is not a case involving the good faith of the action of the Government, or of those officials who procured the treaty, nor within the principle of the case just cited, where both parties were entitled to have and receive by virtue of the act conferring jurisdiction only those things to which they were entitled under the stipulations of a treaty plain upon its face, concerning which there was but little or no controversy, but one where the instrument, being ambiguously expressed, left room for doubt as to the intention of the parties. The jurisdictional act following the rule in equity in such cases admits proof of matter underlying the instrument as an aid in expounding the ambiguity. It was competent for Congress to direct this method of arriving at the doubtful intent in the matter of an agreement with one of the domestic tribes, not to found an implied trust of that character known to equity jurisdiction as one independent of express intent forced upon the conscience by operation of law, but to ascertain whether a trust arose upon the presumed intention of the parties.

The court can not undertake to do what the parties on the face of the agreement have stipulated they only should do, as shown in the case of "The Amiable Isabella" (6 Wheat., 1). There it appears the parties to the Spanish treaty of 1795 had clearly provided that the form of the passport agreed to be annexed to the treaty was to be fixed by themselves, and it was accordingly held that the court could not annex the form upon the failure of the parties so to do. Here, if the United States have clearly taken the leased land, then they have the possession of whatever they intended to take, and moral obligations are to be excluded, as in all other cases of clearly expressed intent and understanding. But unless it is manifest from the instrument that the United States, for the small consideration named, have the absolute title of these millions of acres for public purposes, and not for mere purposes of Indian settlement as

provided by the treaty of 1855, then the environments of the parties must be taken into account in determining the purpose of the cession. If the parties ceding the land in such case understood the proposition to which they were invited to assent as one not designed to take the land from them absolutely, it is not probable they scanned the agreement with the same degree of care and vigilance as the proposition itself. This proposition tended to prevent such scrutiny, and, if it were necessary, throw them off their guard, and in this respect the case is not unlike that of Insurance Company v. Hearne (20th Wall., 494).

905 The question resolves itself at last into the understanding of the parties and especially the understanding of the Indians with respect to the meaning of an uncertain agreement arising out of the transfer of an immense domain for a nominal consideration, the incorporation of a large body of Indians as well as freedmen into the body politic of the plaintiff nations, and the receipt by them of a small sum stipulated to be paid for uses not necessarily relating to the advantage of the parties, but for those whom the treaty provided were to be incorporated. The rules to be applied in arriving at the understanding of the parties are those which relate to a treaty between the Government as a superior and a domestic tribe as an inferior, and the presumption of fact and of right presupposed from the relation existing between the said parties and the rights and conduct of each under the agreement. The use of evidence aliunde the instrument showing or tending to show the avowed objects in view does not necessarily imply that the language of the treaty is to be amended by the extrinsic matter, or that the treaty executed by the parties is to be displaced for one to be made by the court (which, of course, can not be done), but that the doubtful instrument as it appears to have been written is to be interpreted in the light of the occurrences which explain the intent and the reasons for the different understanding. So that, if the treaty admits of two constructions, one restrictive as to the rights that may be claimed under it, and the other liberal, the latter is to be preferred. (Hauenstein v. Lynham, 100 U.S., 483.) This view is not inconsistent with the argument for the United States in the construction of the Choctaw treaty of 1820, where a map not a part of the agreement is yet sought to be incorporated within its terms upon the mere statement of the commissioners for the Government in transmitting the treaty that Little River, "from an examination of the map," would be found at a certain place.

The acts and declarations of executive officers of the two Indian governments and of the United States are competent, whether viewed as admissions on the part of the nations as an absolute cession or as admissions of a trust on the part of the United States, but such acts and declarations are not binding. Contemporaneous construction, however, by those called upon to act under the law where the matter is ambiguous or doubtful ought not to be overruled without cogent reasons. (Brown v. United States, 113 U. S., 571, and authorities cited.)

Concerning any legislative acts, the importance of these must be measured by their relation to the subject, the language used with respect to the character of the cession, and the circumstances under which they were made.

As the national governments of the two nations never made any express acknowledgment of the absoluteness of the cession of any land, and the Congress of the United States did pass an act fixing in express words the trust character of other lands ceded by the same language by which the lands in suit were ceded, the effect of this act will be considered. (Act of 1891, § 15, 26 Stats., 989, 1025.)

The lands mentioned in this act were a part of the leased district, and the statute was passed on the memorial of the Choctaws and Chickasaws to compensate them for precisely the same kind of an equitable or reversionary interest claimed here. The lands now in controversy had
906 not then been appropriated, but the lands paid for under the act mentioned had been seized under an Executive order, which was subsequently approved, and the Cheyenne and Arapahoe Indians had been placed thereon.

The act is urged by the claimants as a legislative determination in favor of claimants conclusive upon two theories: First, that the act is in pari materia with article 3 of the treaty of 1866, and, second, that it is a legislative construction which of itself must be obeyed by the courts as the law of the case. It is assailed by the defendants as an act based on erroneous statements contained in the memorial of the claimants, annexed to a report of a committee of Congress (H. R. 3147, 51st Cong., 1st sess., and Sen. Mis. Doc., 107, ib.), whereby Congress was misinformed and its members misled, and also because the provision appropriating $2,991,450 for the payment of the Choctaw and Chickasaw beneficiaries was inserted as an amendment to a general bill in the last days of the Congress which passed the law, and that in spite of House opposition to the Senate amendments the amended bill was passed, as Congress was nearly ready to adjourn. It is finally questioned as not covering the precise land in controversy here.

Respect for a coordinate branch of the Government forbids the courts to assume legislation to be the result of fraud or misinformation, or that Congress acted hastily or improvidently.

That dangers exist and injustice sometimes results from appropriations in settlement of private claims in all legislative bodies is recognized, and by none more sensibly, perhaps, than by those most responsible; but in all cases it must be taken for granted that those who seek relief state their case most strongly for their interests and draw inferences not calculated in every case to stand the test of careful investigation. While the friends which such a measure secures may even be imposed upon in occasional instances, we can not suppose any act of Congress to be the result of misconception or imposition.

But the entire history of the legislation now assailed refutes the defense. President Harrison withheld his veto to the act in question, though he believed the cession made by the treaty of 1866 was absolute, on the ground that the Executive veto would defeat the entire bill carrying appropriations for other objects. This fact subsequently appeared in a special message from the President to Congress, in which he also stated his belief that the lands for which the money was to be paid were not ceded in trust. This message was first considered by the two Committees on Indian Affairs and afterwards in the Senate and House, and again the matter was discussed in the light of the views submitted by the President, and again Congress affirmed its declaration of the trust character of

the estate conveyed by the treaty and directed the payment of the money covered by the appropriation.

The debates in Congress are not evidence for the purpose of interpreting a law or treaty. Upon a question of information, or want of it, in the legislative body concerning a measure that becomes enacted into law, if such an issue could be raised, debates are admissible to show the fact of discussion, but nothing more.

The action of the Fifty-second Congress affirming their declaration of the trust was qualified by a proviso to the resolution declaring that neither the passage of the original act carrying the appropriation to pay
907 the Choctaws and Chickasaws for their interest in the lands of the Cheyenne and Arapahoe Reservation, nor of the resolution affirming the act, should be held in any way to commit the Government to the payment of any further sum for any interest alleged by the claimants in the remaining lands of the leased district. (Joint Res., Jan. 18, 1893, 27 Stats., 753.) Following this came the jurisdictional act in the Fifty-third Congress, that as to these lands nothing contained in the jurisdictional act shall be construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands. (28 Stats., 898.) Thus Congress was tenacious of the legislative interpretation of the treaty and unwilling to recede from that view as it related to the lands seized, but for any lands thereafter claimed to be taken in violation of the trust the claimants were to be held in abeyance, according to circumstances. The agreement between the United States and the defendant Indians raised the issue in such form Congress chose to send the whole matter here for investigation in connection with the claim of the Wichitas as first occupants.

The jurisdictional act eliminates the binding character of the previous legislative construction, and to that extent is a repeal of the act of 1891. In any event the act of 1891 can not be accepted as binding on the court, but is chiefly valuable, as showing by way of argument that a trust in favor of the claimants was created by the treaty of 1866 on all the lands included in the cession, and as showing that if Congress regarded the matter in that light the claimants probably understood the matter the same way when they executed it.

Article three cedes the land in the following language: "The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the ninety-eighth degree of west longitude known as the Leased District: Provided, etc."

The claimants contend that even this clause of article three standing alone did not transfer or divest the property of the members of the Choctaw and Chickasaw nations in the lands, because it was not competent for their governments, except in the exercise of the right of eminent domain, to transfer the title owned and enjoyed by the individuals of the nations.

Private ownership of property in territory ceded by one State or nation to another generally remains unimpaired by the terms of treaties which transfer dominion of the ceded country, but how such a question can be put into this case for purposes of practical relief is not clear. It is true the nations in their sovereign capacity have preferred their claim as such

and have filed their petition in the name of and for the benefit of the members and citizens of the nations also, but the act conferring jurisdiction directs the court to determine the rights of the nations. No mention is made of the claims of individuals in the jurisdictional statute, and no claims of a private character seem to have ever been preferred by any of the members of these nations in memorializing Congress on the subject of their rights.

The first grant of lands from the United States, which included those in controversy, was made to the Choctaw Nation. (Treaty of 1820, art. 2.) Under the provisions of the treaty of 1830 and of the
908 patent thereunder title was vested in "the Choctaw Nation" and their descendants in fee simple, to inure to them while they shall exist as a nation and live upon it. (Treaty of 1830, art. 2.) The treaty of 1855 by its first article provided:

"And, pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: Provided, however, No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same." (11 Stats., 612.)

This guaranty, being pursuant to the act of May 28, 1830 (4 Stats., 411), must necessarily be such a guaranty as that act authorized in the following section:

"SEC. 3. And be it further enacted, That in the making of any such exchange or exchanges it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange was made that the United States will forever secure and guarantee to them, and their heirs and successors, the country so exchanged with them; and, if they prefer it, the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

It was not the object of the treaty of 1855 to recognize rights of private ownership or change the nature of the Indian title of occupancy into one of different character. That treaty on its face shows it was in settlement of the claims of the Chickasaws as against the Choctaws, and the lands covered by the guaranty were to be held in common thereafter by the two tribes instead of one; that is, each member of each tribe was to have the same rights in the country of the two nations that the members of one tribe formerly had under the treaty of 1830, before the convention of 1837 between the two nations. The guaranty was intended to secure to two tribes in common what one tribe had before then enjoyed to itself alone. The land continued to be tribal land after this treaty as much as it had been before, in the sense that when it again became the subject of treaty with the United States the nations could only deal with it, and when they ceded it such cession by them extinguished the claims of the members absolutely.

The nature of the Indian holding was something like the base or qualified fee defined to be such a one as hath a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. (2 Blacks., 109.) Defining a qualified base or determinable fee, Chancellor Kent says it is an interest which may continue forever, but the estate is liable to be determined, without the aid of a conveyance, by some act or event circumscribing its continuance or extent. It is the uncertainty of the event and the possibility that the fee may last forever that renders the estate a fee and not merely a freehold. If the condition attached to the fee is one which is certain to happen, then there is a reversion. If such condition is one which may never happen there is not a reversion, but only a possibility of a reversion. (4 Kent Com., 9; 1 Washburn on Real Prop., 90.)

The individuals of these nations had no such estate by any treaty as upon the death of any member descended to his immediate heirs. The land was communal property, which upon the death of any mem-
909 ber descended, as to his interest, to all the surviving members of the tribe alike.

The United States already had sovereignty over the land, subject to the uses of the two nations under the treaties. If by article three of the last treaty the nations made an absolute cession, the act of the body politic disposed of whatever private interest the members had in the land, as well as the dominion of the tribes in their corporate capacity.

Subtle and plausible as the argument seems to be as a piece of judicial literature, it is not tenable upon its merits. As the controversy here does not relate to the character of the title as between the members and the nations in their corporate capacity, we could not entertain claims of private ownership on the merits if established.

Following the cession is a proviso relating to the disposition and uses of the fund. Then come numerous articles covering many subjects with much circumstantiality of detail. Prominent features in the treaty which manifest the purposes of the Government are those provisions relating to (1) the admission of persons of African descent resident in the country to certain rights and privileges then possessed by the Choctaws and Chickasaws and securing to the descendants of the former the same rights and privileges, including rights of property, and (2) those providing for the admission of certain Indians into the country and (3) the continuation of that condition of affairs which would keep the country for the use of Indians exclusively.

The stipulations announced by the commissioners at the Fort Smith council were manifestly attempted to be carried out, but the manner and form of doing so, and whether accurately and fully embodied in the treaty, afford room for controversy, especially as to the fifth stipulation.

Conspicuously apparent are the provisions establishing an Indian territorial government in the Indian Territory, and excluding white men, and confirming to the Choctaw and Chickasaw nations all the rights, privileges, and immunities theretofore possessed by the said nations, or the individuals thereof, to which they were entitled under previous treaties not inconsistent with the one then executed.

Twenty-seven articles are devoted to a scheme for the survey of the lands of the nations east of the ninety-eighth degree of west longitude, and a division of the lands into severalty with a right of selection, first,

by the Choctaws and Chickasaws, and then by Indians known and designated as Kansas Indians, not exceeding 10,000 in number, and then by the persons of African descent named in the third article of the treaty. There was, by the provisions of the treaty in regard to the selections of the land in the order named, a chance for a part of the agreement to become ineffective, and this part did very soon come to naught by the refusal of the two nations to approve the same.

Why so many things should be annexed to a simple cession of land if the transfer was meant to become absolute does not appear. Enough does appear to make an unqualified transfer seem inconsistent and repugnant, and though some of the conditions and qualifying words leave room to suppose that no reservation as to title or an interest in the land was intended to be made, taken as a whole the language following the cession is inconsistent with the absoluteness of the transfer and
910 offers a glaring want of reciprocity and equality between the parties. There is at least enough of contradiction and inequality to create the belief that, as the parties did not see fit to make the cession for so much money to be paid and stop at that, something else was intended by one party or the other, or by both.

The first and second stipulations announced by those negotiating the matter for the United States are embodied in article 1 of the treaty as it was actually executed. The third and fourth of these stipulations appear in articles 2, 3, and 4. The sixth stipulation is in article 8 and the seventh in article 43.

The third article relates to the cession of the leased district for Indian purposes, and the third and fourth articles to the provisions to be made for freedmen of African descent. The fifth article relates to a general amnesty for past offenses as therein stated. The sixth article relates to granting the right of way to railroads which may be authorized to be constructed through the Territory. Article 8 relates to the establishment of an Indian territorial government in the Indian Territory, as provided for in the sixth stipulation at Fort Smith. Article 9 relates to educational purposes. Articles 10 and 45 relate to the reaffirmance by the United States of all their former obligations to the Choctaws and Chickasaws.

Commencing with article 11 and ending with article 37, both inclusive, and including all intervening articles, provision is made for a survey of all the Choctaw and Chickasaw lands east of the ninety-eighth degree, and division of the lands into severalty. This is the scheme which fell through because it was made dependent upon the will of the Choctaw and Chickasaw legislatures, as provided in the eleventh article, the first of the articles relating to the scheme. It has no apparent connection with the fifth stipulation at Fort Smith, because that was an absolute requirement, and this scheme was conditional, and because no such scheme was suggested in the fifth stipulation.

Article 38 defines who are members of the Choctaw and Chickasaw nations. Articles 39 and 40 refer to trading purposes. Article 41 relates to the competency of Choctaws and Chickasaws as witnesses. Article 42 relates to the delivering up of criminals. Article 43 relates to the exclusion of white men from the Indian Territory. Article 44 to the establishment of post-offices. Article 45 is to be read in connection with

article 10. Article 46 relates to an advance of money to Choctaws and Chickasaws. Article 47 relates to certain provisions concerning funds and annuities, effective upon request, after lands had been assigned in severalty. Article 48 relates to payment of the Choctaw and Chickasaw commissioners. Article 49 relates to awards to loyal Choctaws and Chickasaws. Article 50 relates to payments to loyal citizens of the United States for losses. Article 51 provided for an abrogation of all inconsistent treaties and parts of treaties.

Taking the form given by the secretary of the council as to the fifth stipulation, we find that a portion of the lands were required to be set apart for two distinct classes of Indians—(1) friendly tribes then in Kansas, and (2) friendly tribes then located elsewhere.

The following articles of the treaty must be considered to determine the value of the contentions of the defendants with respect to the
911 omission or embodiment of the vital terms of the unsigned treaty and the ultimatum submitted at the outset, to wit:

"ART. 3. * * * Until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to * * * give such persons who were residents as aforesaid, and their descendants, 40 acres each of the land of said nations, on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections, as herein provided; * * *

"ART. 11. * * * Should the Choctaw and Chickasaw people, through their respective legislative councils, agree to the survey and dividing their land on the system of the United States, the land aforesaid, east of the ninety-eighth degree of west longitude, shall be, in view of the arrangements hereinafter mentioned, surveyed and laid off in ranges, townships, sections, and parts of sections; * * *

"ART. 12. The maps of said surveys shall exhibit, as far as practicable, the outlines of the actual occupancy of members of the said nations, respectively, and, when they are completed, shall be returned to the said land office at Boggy Depot for inspection by all parties interested, when notice for ninety days shall be given of such return. * * *

"ART. 15. At the expiration of the ninety days' notice aforesaid, the selection, which is to change the tenure of land in the Choctaw and Chickasaw nations from a holding in common to a holding in severalty shall take place, when every Choctaw and Chickasaw shall have the right to one quarter section of land. * * *

"ART. 25. During ninety days from the expiration of ninety days' notice aforesaid the Choctaws and Chickasaws shall have the exclusive right to make selections as aforesaid. * * *

"ART. 30. The Choctaw and Chickasaw nations shall receive into their respective districts, east of the ninety-eighth degree of west longitude, in the proportion of one-fourth in the Chickasaw and three-fourths in the Choctaw Nation, civilized Indians from the tribes known by the general name of the Kansas Indians, being Indians to the north of the Indian Territory, not exceeding 10,000 in number, who shall have in the Choctaw and Chickasaw nations the same rights as the Choctaws and Chickasaws, of whom they shall be the fellow-citizens, governed by the same

laws and enjoying the same privileges, with the exception of the right to participate in the Choctaw and Chickasaw annuities and other moneys and in the public domain, should the same, or the proceeds thereof, be divided per capita among the Choctaws and Chickasaws, and, among others, the right to select land, as herein provided for Choctaws and Chickasaws, after the expiration of the ninety days, during which the selections of land are to be made, as aforesaid, by said Choctaws and Chickasaws. * * *

"ART. 31. And whereas some time must necessarily elapse before the surveys, maps, and selections herein provided for can be completed so as to permit the said Kansas Indians to make their selections in their order, during which time the United States may desire to remove the said Indians from their present abiding places, it is hereby agreed that the said Indians may at once come into the Choctaw and Chickasaw nations, settling themselves temporarily as citizens of the said nations, respectively, upon such land as suits them and is not already occupied.

"ART. 37. In consideration of the right of selection, hereinbefore accorded to certain Indians other than the Choctaws and Chickasaws, the United States agree to pay to the Choctaw and Chickasaw nations, out of the funds of Indians removing into said nations, respectively, under the provisions of this treaty, such sum as may be fixed by the legislatures of said nations, not exceeding $1 per acre." * * *

We think the fifth stipulation meant tribal occupancy and a future agreement with reference to this kind of an occupancy, and there is no such agreement to be found in article 30.

The term "elsewhere," appearing in the fifth stipulation, embraced any and all country in which such tribes were located at that time except the State of Kansas. As it appears in the fifth stipulation it is clearly not embodied in the said article. Its provisions can not apply to tribes not located either in Kansas or north of the Indian Territory. The word "elsewhere" can not be ignored, nor can it be assumed that it only embraces localities north of the Indian Territory and that all tribes are covered by that part of article 30 referring to "civilized Indians, from the tribes known by the general name of the Kansas Indians, being Indians to the north of the Indian Territory." The term must
912 be taken to mean what the president of the council stated when he informed the Indians that the commissioners were empowered to treat with the delegates of the tribes located within the Indian Territory and others living west and north of it. The propositions were addressed to seventeen tribes, living in various places.

The proposition that the leased district could not have been embraced within the land required by the fifth stipulation to be set apart for friendly Indians is sought to be maintained upon the theory that the stipulation required "a portion of the lands hitherto owned and occupied" by those to whom the stipulations were submitted, and the Choctaws and Chickasaws it is known were not then in the occupancy of the leased district. This argument is tantamount to saying that the fifth stipulation meant that the lands to be set apart should not only be owned but actually occupied by the owners at the same time, and that the portion to be set apart for friendly Indians was not to come from the large portion

owned but constructively occupied. As the land west of the ninety-eighth meridian was still owned by the claimants and the lease did not terminate their rights as owners, and as article 3 of the treaty of 1855 provided that the land in suit should be a part of the Choctaw district, and by article 9 of the same treaty it was to remain open to settlement by Choctaws and Chickasaws, as it had been, we think the commissioners did not mean to exclude the leased land from that required to be set apart. The claimants were as much the actual occupants of that part of the leased district not used by the Wichitas as they were of the major portion of their domain east of the ninety-eighth meridian.

Articles 30, 31, and 37 presented a general scheme for a survey and division of the lands in severalty east of the ninety-eighth degree, the whole thing being elaborated in articles 11 and 12 to 37, inclusive. The scheme of the treaty outside of tribal occupancy is disclosed in article 11, where provision is made for allotting lands among the people of the two nations so that the lands would be held in severalty instead of in common, and for that purpose to survey it into ranges, townships, and sections and parts of sections. Then came the series of articles providing for the manner of making selections. This scheme failed for want of Choctaw and Chickasaw consent, as stated. So everything contained in the articles beginning with 11 and ending with 37 may be considered out of the treaty. The commissioners of the United States would most probably not have made a demand for a portion of the lands of these claimants and then put it in their power to completely nullify the demand unless it was intended to give effect to the fifth stipulation somewhere else.

Article 30 does not mean the admission of tribes as such, but individual civilized Indians from tribes who upon their admission might become citizens of the Choctaw and Chickasaw nations.

Article 31 provides that they might come at once, settling themselves temporarily as citizens on lands not occupied.

Article 37 provides that the United States should pay the Choctaws and Chickasaws such sums as the legislatures might fix, not exceeding $1 per acre, for the lands taken by those coming in as citizens. These were provisions for individuals to become citizens and take special allotments of sections and to hold the surplus or unallotted lands in common
913 by all the Choctaws and Chickasaws and the new citizens together, who, by the act of coming in and taking a part of the land, become Choctaws and Chickasaws to all intents and purposes.

This scheme was not a setting apart of a portion of the lands owned and occupied for the friendly Indians in Kansas and elsewhere.

The fifth stipulation is either implied from the language of the third article or omitted altogether from the treaty. The fourth article of the unsigned treaty contemplated a definitive agreement by the Choctaws and Chickasaws to admit friendly Indians to their country east of the ninety-eighth degree. The agreement as actually made was a conditional one for the admission of friendly Indians, limited to a certain number to come in as citizens. Their occupancy was not to be a tribal occupancy.

Article 31 can not be construed to mean that the United States possessed the right to settle Indians east of the ninety-eighth degree until the Choctaw and Chickasaw legislatures should decide to survey and

divide their lands east of that degree. In stipulating that the Kansas Indians might come into the Choctaw and Chickasaw country at once without waiting for the surveys and maps, the agreement must be read with other articles on this subject and interpreted to mean that when the legislatures approved the plan of making the surveys and maps for the division of the lands the Kansas Indians might then come at once. The survey was never begun, none of the Kansas Indians ever came east of the ninety-eighth degree, and the United States has never attempted to put any of them there. The terms prescribed in article 37 have reference to the Kansas Indians and the terms of their admission, if they were to be admitted by the action of the legislatures of the Choctaws and Chickasaws within the limits prescribed by the treaty. The fifth stipulation contemplated the terms to be fixed either by the parties with the approval of the Government or by the Government itself. The difference is apparent enough to lead to the conclusion that article 37 does not embody the fifth stipulation.

For the reasons set forth, articles 30, 31, and 37 do not satisfy the requirements of the ultimatum presented at Fort Smith.

The fifth stipulation is implied from the language of the cession, because as to the land west of the ninety-eighth degree it was to be set apart and presumably conveyed to carry out the purpose resting unmistakably in writing in the statement of the president of the council at Fort Smith and in the unsigned treaty offered by the commissioners of the United States before the adjournment of the council. If the purpose of the cession was not explicitly stated in the treaty, the conditions were present upon which it was demanded and acceded to, and, having been acted on under these circumstances, the cession and the demand for it must be construed together as the thing the parties intended to consummate.

The proviso to article 3 relates to the disposition and uses of the fund when the grantors should, within two years after the ratification of the treaty, make laws, rules, and regulations conferring on persons of African descent resident among them all the rights, privileges, and immunities of said nation, including the right of suffrage, together with 40 acres of land to be assigned to each of them. On the enactment of the necessary laws providing for these people the consideration was to
914 be paid to the claimants, less such sum at $100 per capita as should be sufficient to pay those persons of African descent actually removing. If these laws were not made within the two years then the money was to by held by the United States for the use and benefit of such of those freedmen as the Government should remove, the United States agreeing within ninety days from the expiration of two years to remove all those willing to go, but the freedmen remaining or returning to have no benefit of the $300,000, but to be upon the same footing as other citizens of the United States in said nations. The express language is, that the consideration shall cease to be held in trust for the Choctaws and Chickasaws should the laws of the nations necessary to give the privileges and rights of property named not be passed within the two years. And to guard against the contingency of the failure of the nations to pass the laws necessary to invest the freedmen with the certain rights stipulated for their benefit in the third article, it was provided by article 4 that—

"The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and protected against injury; and they further agree that while the said freedmen now in the Choctaw and Chickasaw nations remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves by hiring, not interfering with the existing improvements without the consent of the occupant, it being understood that, in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid."

Thus article 4 substitutes immediate actual but temporary civil and property rights to be enjoyed by the freedmen until the permanent scheme of the treaty was worked out.

Article 46 is as follows:

"Of the money stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians among them, the sum of one hundred and fifty thousand dollars shall be advanced and paid to the Choctaws and fifty thousand dollars to the Chickasaws through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nations in the hands of the United States; the residue, not affected by any provision of this treaty, to remain in the Treasury of the United States at an annual interest of five per cent, no part of which shall be paid out as an annuity, but shall be annually paid to the treasurer of said nations, respectively, to be regularly and judiciously applied, under the direction of their respective legislative councils, to the support of their Government, the purposes of education, and such other objects as may be calculated to promote and advance the welfare and happiness of said nations and their people, respectively."

Stripped of all technical considerations, the practical effect of the claim for the absoluteness of the cession is such as to involve the taking by the white man, for a consideration, to be applied to the benefit of the black man, some millions of acres of land belonging to the red man, the transfer so operating as to enable the whites to keep the land and the red people to get the consideration only by surrendering its equivalent to the blacks. That the Government took the land ceded, followed by some sort of a use in the grant in those making the cession, seems probable, unless the intention existed to wrong the grantors, and that we can not
915 any more believe than we can to entertain the suggestion that it was the policy of the United States to take this land from the claimants because of their participation in the rebellion.

The theory that the cession became absolute involves the United States in the plan of deliberately abandoning the original lease of the

ceded territory. By that lease the Government already had all the rights it wanted in the land except the privilege of putting Indians there not named in the lease. The effect of the abandonment of the lease would include an abandonment of the very purpose for which the lease was taken, for if the leased land was to become a part of the public domain it ceased to be Indian country. Every stipulation that the country should be kept intact as Indian country would thus be violated as well as every policy of the Government reversed.

Article 43 expressly prohibits white intruders. Taken in connection with the establishment of an Indian territorial government in the Indian Territory, as provided in article 8 of the treaty, the sixth stipulation presented at Fort Smith is made to appear, and additional emphasis is given to the guaranty of the Dancing Rabbit Creek treaty under which the Choctaws left Mississippi to live upon this land. Article 43 is as follows:

"ART. 43. The United States promise and agree that no white person, except officers, agents, and employees of the Government, and of any internal improvement company, or persons traveling through or temporarily sojourning in the said nations, or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said nations of Choctaws and Chickasaws, according to their laws, customs, or usages; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations."

Article 4 of the treaty of 1830 says:

"The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants."

Articles 10 and 45 reaffirmed the obligations of the Government with respect to all rights to which the nations were entitled by former treaties and the legislation thereunder as far as consistent with the new treaty. These articles are consistent with the cession for Indian purposes and in harmony with the recitals which, providing for the repayment of a part of the money after the admission of the Kansas Indians and the application of the other part of the consideration to the support of a government which included the new population proposed to be incorporated, continued the country for the use of the Indians.

That a use should have been retained to the Seminoles, the Creeks, and the Cherokees in the lands ceded by them while an implied trust did not result to the Choctaws and Chickasaws is incredible when we consider the purposes for which all the lands were wanted under the ultimatum addressed to all alike.

The grant in the Seminole treaty of March 11, 1866, was made "in compliance with the desire of the United States to locate other
916 Indians and freedmen thereon." (14 Stats., 755.) It was an unlimited grant and the Seminoles ceded and conveyed their entire domain of 2,169,080 acres for $325,362, being about 15 cents an acre. When these lands were sought to be diverted from the purposes for which they were set apart the question arose as to the measure of Seminole right therein, with the result that Congress appropriated $1,912,942.02 for their reversionary interest. (Ex. Doc., 50th Cong., 2d sess.; 25 Stats., 1004.)

The grant of lands in the Creek treaty of June 14, 1866, was made "in compliance with the desire of the United States to locate other Indians and freedmen thereon." The Creeks ceded the west half of their entire domain "to be sold and used as homes for such other civilized Indians as the United States may desire to settle thereon." (14 Stats., 785.) This was a cession, with limitations, of 3,250,560 acres for $975,168, or about 30 cents an acre. When the Creek lands were sought to be opened for public settlement Congress appropriated $2,280,857.10 for the equity of the Creeks in the lands, being at the rate of $1.25 per acre, deducting the 30 cents per acre paid under the treaty of 1866 as to unassigned lands and 20 cents per acre to cover expenses on lands which had been assigned to other Indians and occupied by them. (Ex. Doc. 98, 50th Cong., 2d sess.; 25 Stats., 759.)

The treaty with the Cherokees of July 19, 1866, was dissimilar from all the other treaties. The Cherokees agreed to sell to the United States, at a price to be agreed on, the territory west of the ninety-sixth degree of west longitude, for the settlement of friendly Indians, as wanted. By the failure to agree on terms the President of the United States was to fix the price of the land, and in the meantime the Cherokees were to have exclusive jurisdiction of all the unoccupied lands, so that no white man should come in. (Stats., .)

The suggestion appears that the lands which formed the subject of these different treaties were not held by the same kind of a title, and that the terms are unlike in all the agreements.

The existing circumstances were not precisely alike, and there were different conditions of estate held by the different tribes, and different subjects were necessary to be treated. This state of affairs accounts for the use of different phraseology in making each treaty. Pervading each agreement is the purpose to continue to hold all the lands for Indians alone. Nowhere does the suggestion appear to have lands ceded to be added to the public domain.

No reason existed for discrimination against the Choctaws and Cickasaws, except that the United States held a lease on some of their land. But it was only a lease for purposes quite restricted—a permit to the Government to put certain Indians there. The Government not only could not sell the land, but it could not go upon it. The lease itself stood in the way of the enlarged policy suggested in 1864, but with some provision admitting Indians from country not named in the treaty of 1855; or with a cession having in view those objects we think the Government got all it intended to get. Under its terms the Choctaws and Chickasaws might have occupied its unsettled portion by abandoning every other

acre of land then occupied by them not embraced in the lease, thus frustrating the purpose of getting more settlements on the leased territory.

The treaty which finally defined the title and tenure of the Creeks and Seminoles to their lands was entered into August 7, 1856. (11 917 Stats., 699.) In article 3 of that agreement the same title by which the lands were held by the Creek Nation by the fourteenth article of the treaty of 1832, the third of the treaty of 1833, and by the letters patent of 1852 were guaranteed to the Seminoles and to the Creeks. (11 Stats., 699.) Those agreements conferred the fee to continue to said Indians so long as they existed as nations and occupied the country. This was substantially what was done for the Choctaws by the treaty of 1830.

It would be against the history of our dealings with nearly every other tribe at the close of the war to say that the civilized tribes were singled out because of their acts of hostility during the strife as special objects of punishment, and that because of their participation in the struggle it was the policy of the Government to inflict punishment upon them either by the deprivation of any of their funds or by the forfeiture of their lands. It would also be in the face of the treaties with the other three civilized nations and the acts of the Government under these now to insist that the Choctaws and Chickasaws were intentionally deprived of any part of their lands as the penalty of their hostility, while the Creeks, the Seminoles, and the Cherokees were not. If any such purpose had existed, Congress, no doubt, would have manifested it as they did do in the only case of the kind, where, for an unprovoked attack on the settlements of Minnesota, the Sioux were deprived of their annuities. (12 Stats., 652.)

It was an era of reconciliation and restoration, and while it is true the Indians assembled at Fort Smith in September, 1865, were informed that they were at the mercy of the Government, the suggestion was impressed upon the loyal and disloyal alike, with no suggestion, however, that the common property of all was to be taken for the disobedience of those who had not adhered to the cause of the United States. However true it is that the large majority of the claimants had taken up arms against the Government, the fact remains that individual members of the nations did not do so, and the forfeiture of lands would have been the punishment of all.

And that any such intention existed as regards Indians who happened to be possessed of lands and who were not immediately responsible for hostilities is without belief when it is considered that as to the whites who were responsible and possessed of similar property no suggestion of confiscation was anywhere made. The purpose to take property as a penalty from Indians who could not commit treason, and not take the equivalent from white citizens who could, can not be attributed to the Government without reflecting upon its generosity and justice and contradicting all history.

When the peace demanded was secured from these tribes, the conqueror disappeared, and the public guardian took the place of the agencies of force. Then began in earnest the efforts of the commissioners to secure land for the colonization of other Indians and at the same time to protect as far as practicable the freedmen in the nations,

whose situation at that time was peculiar and regarded so to such an extent their removal was deemed especially desirable by the Government.

There is no evidence that it was the understanding that white people were to be excluded merely from the home country of the Choctaws and Chickasaws. What evidence we have points to the conclusion that the parties supposed the guaranty on this subject related to the exclu-
918 sion of the whites from all Choctaw and Chickasaw territory.

The unsigned treaty asked for a modification of the terms of the ninth article of the treaty of 1855, under which Indians were admitted and whites excluded. The modification sought the admission of other Indians only. Everything suggested in the negotiations related to the freedmen who happened to be in the country and to Indians who did not happen to be there; but all propositions were in line with previous treaties, which guaranteed the exclusion of white men and white men's government, with absolutely nothing to apprise the Choctaws and Chickasaws that the guaranties were meant for a part only of their territory.

The Choctaw and Chickasaw treaty came next after the Seminole treaty. Seeing the Seminoles cede over 2,000,000 acres of land for about $325,000 for a specific purpose—named, it is true, but with no limitation upon the grant, and yet one thought at that time, and conceded now, to leave a reversionary interest to the grantors—the Choctaws and Chickasaws had a right to understand, and we think did understand, that when they were required to cede nearly 8,000,000 acres of their land at $300,000 they were not surrendering all their interest in it. While the Seminoles got 15 cents an acre, the Choctaws and Chickasaws got about 4 cents an acre, if we assume they got anything at all. The lease which the United States already had on the land diminished the interest of the Choctaws and Chickasaws to the extent of the rights granted by the lease, and herein we find the reason which probably accounts for the estimate of 4 cents an acre on their land.

On July 4, 1866, the United States made a treaty with the Delawares. (Stats., .) In its preamble it was recited that the United States had made treaties with the Choctaws and Chickasaws, the Creeks, and the Seminoles, whereby the Government had "acquired the right to locate other Indians within" the Indian country. Under article 4 the United States agreed to sell to the Delaware Indians a tract of land in the Indian country ceded by the Choctaws and Chickasaws, the Creeks, or the Seminoles, or which thereafter might be ceded by the Cherokees, the land to be selected by the Delawares. This language implied that the Government got as much of a title from one tribe as from another, no more and no less, and all for the same purpose. The agreement with the Delawares was in line with and pursuant to the previously announced policy of obtaining land upon which other Indians might be located.

In 1871 Congress passed an act prohibiting the further colonization of Indians on unoccupied lands in the Indian Territory, except with its consent. (Stats., .)

In 1879 the question was raised as to the right of the Government to remove persons from the unoccupied lands who, in apparent violation of the treaties, had gone there. The Secretary of the Interior, in reply to

an inquiry from the Secretary of War on this subject, after reciting the lease of 1855 and the effect of article 9 thereof, stated "that the treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust." This statement is inaccurate as a legal proposition. If the direct purchase become the substitute of the lease which originated the trust, on its face there could be no trust. A direct purchase would supersede the trust outright. Secretary Schurz seems to have confused the matter of an express trust with a trust implied by law.

919 None, however, can doubt that the idea intended to be conveyed was that, despite the direct cession, the Government conceded the reversionary interest of the claimants. And who else could he have meant but the claimants when the Secretary said the purchase did not alter the trust, after referring to the lease which created it in favor of the Choctaws and Chickasaws, and in them alone? The theory that the trust was for somebody else is not only without support in the proof, but against every conceivable reason for taking a trust for other tribes. If the Government took the land in trust for the benefit of other Indians who had no interest in the ceded territory, it accomplished by indirection what it could better have done upon the claim of absolute ownership and with much less inconvenience to itself.

In response to a resolution of the Senate, adopted February 17, 1882, calling for information concerning the rights of settlers, another Secretary of the Interior went into the history of these lands and informed the Senate that the cession of the treaty of April 28, 1866, with the claimants was, by its tenth article, "made subject to the conditions of the compact of June 22, 1855," in the ninth article thereof. (Secretary Kirkwood's letters.) President Hayes had, in the meantime, issued his proclamation warning white intruders off these lands, on the ground that they constituted Indian country, for Indians only. President Arthur followed with his proclamation to the same effect. (H. R. 3147, 51st Cong., 1st sess., 19, 25.) These proclamations originated before any questions had been sprung from the claimants or in their behalf. The Government was interpreting its own treaty. After the controversy was on and the issue had been made in Congress President Cleveland issued his proclamation on the same subject, thus keeping in line with his predecessors, until the courts overthrew the Executive and legislative view of the purposes for which the lands had been ceded. (Proc. March 16, 1896.)

As far back as 1881 the Land Office did not regard the leased district as the absolute property of the United States, but "subject to specific trusts," set forth in detail. Acting Commissioner Holcomb conceded the assumption of trusts under the several treaties which included the Choctaw and Chickasaw agreement. (Rep., Apr. 25, 1881.)

Secretary Teller, in a communication to the Senate concerning lands in the Indian Territory not claimed and occupied by the Five Tribes, said in 1884 that "these lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, to be held for Indian purposes, and to some extent for the settlement of the former slaves of some of said nations, or portions thereof." (Com. Sec. of Int., Feb. 14, 1884.) The status of the ceded lands was again considered by the same

Secretary the following year, and the first opinion elaborated to the general conclusion that there was a direct trust. (Secretary Teller's Com. to Senate, Jan. 26, 1885.)

The trust character of the estate acquired by the United States was referred to from time to time by other officials connected with the administration of the public lands and of the affairs of the Indians. (Repts. Comm'r Price, 1885, and Acting Comm'r Belt, 1890.) And in 1889, construing the analogous treaty with the Seminoles, Secretary Vilas said it was claimed, "perhaps with force," that the unconditional ces-
920 sion by the Seminoles was, in fact, made upon the same understanding as the cession by the Creeks. In the clear absence of any stipulation in the Seminole agreement that the lands would be used according to the expectation the Secretary did not recognize the demand of the Seminoles made at that time, but when Congress considered the matter, at the instance of the Secretary, an appropriation was made in recognition of the implied trust (25 Stats., 1004, supra). This legislation was by the Congress preceding that which recognized the Choctaw and Chickasaw claim.

The persuasive character of the construction given by officials so intimately connected with the proper disposition of the public lands, and so intent upon procuring lands for nonreservation tribes, becomes of great value when it is considered that such departmental construction was nearly contemporaneous with the execution of the treaty itself. Secretary Noble took a different view of the matter long after, when it came to the question of compensating the claimants for lands taken by Executive order for the Cheyennes and Arapahoes with a result not accepted by Congress, but his dissent is all the more conspicuous by the comparison of his view with that of every other official and department of the Government until the special message of the President adopting the view of Secretary Noble.

By the side of this continuous Executive and legislative construction of the objects of the treaty we must, in justice, notice the only act of the claimants which implies, or seems to imply, that they had a different understanding of the intent.

In an act of the Choctaw council, approved November 20, 1867, entitled "An act to authorize the national attorney to attend to the claims set up against the nation under the forty-ninth and fiftieth articles of the treaty of April 28, 1866, and for other purposes," section 3 provides:

"SEC. 3. Be it further enacted, That the national attorney be, and he is hereby, instructed to respectfully bring to the notice of the Commissioner of Indian Affairs that this nation will not consent to give the freedmen residing among them the 40-acre lots of land, including the right of suffrage, mentioned in the third article of the treaty of April 28, 1866, where they have humbly to submit to the forced sale of the leased district, lying west of ninety-eight degrees west longitude, for about $2\frac{1}{2}$ cents per acre, for objects of negro colonization upon their borders; and he shall also request the said Commissioner of Indian Affairs to provide in due time for said freedmen, for their removal to some country, and remove Kansas Indians here in their stead, if they are willing to be removed."

This recital came a year after the Choctaws had failed by act of their council to ratify that part of the treaty which secured, if ratified, the

assignment of 40 acres each of land east of the ninety-eighth meridian to several thousand freedmen. In the meantime the United States had made no effort to remove the freedmen. They were still there, in a state of uncertainty as to their future and a source of apprehension to their late masters. Under these circumstances it may well be supposed the Choctaws, having refused to admit Kansas Indians, or settle freedmen either, reasonably apprehended the appropriation of other lands for that purpose. Though they had not received the consideration and had put themselves in a situation where it was not likely they would ever receive it, who doubts that under these circumstances they did not feel the power of the United States and had reason to apprehend the colonization of their former slaves on land west of the ninety-eighth meridian with the price of the cession of the land still in the hands of the United States to accomplish it?

921 The inconsistency of this act with any other understanding is diminished by time of its passage and the previous and subsequent conduct of the Choctaws. It is completely contradicted by the conduct of their immediate neighbors and coadjutors, the Chickasaws; and being enacted with reference to exigencies and the probable removal of freedmen to the land, either threatened or supposed to be, we attach no necessary importance to it. And being in the face of what we believe was the understanding as to the uses to which the lands were to be put when they were called on to make the cession, the departmental construction must be held to be what the Government intended, and with that kind of an understanding by able and conscientious officials of the Government the Indians likewise must have understood their act as they allege.

We hold the cession in the treaty of 1866 was not intended to divest the Choctaws and Chickasaws of all their interest in the leased district, but was intended to enlarge the scope of the ninth article of the treaty of 1855. Hence, a trust must be implied in favor of the claimants under the terms of the grant.

And when, after refusing to ratify the full treaty, Congress appropriated sums sufficient to cover the amounts to be paid under article 46 of the agreement and the Choctaws and Chickasaws took the money, the character of the transaction could not be changed by their acceptance of the consideration. If the cession was not absolute, but one in trust, the payments could not operate as an estoppel. If any part of the consideration provided for in article 3 was received as an advance not in payment for the land, but for another purpose, whether for the benefit of freedmen or for securing a government into which large numbers of other Indians were to come and to share, the Choctaws and Chickasaws can not be held to be estopped by receiving the consideration. And, finally, if they received the consideration upon the same understanding that every administrative officer of the Government had proclaimed as to the character of the transaction, their act can not be held to estop them from asserting its true character. The joint resolution of the Fifty-second Congress establishing the trusts in the lands allotted to the Cheyennes and Arapahoes is a recognition, as far as that resolution can affect this case, that no payments had ever been made for any part of the leased district. The act of 1895 ratifying the agreement of 1891 with the defendant Indians is a violation of the trust. The Government had the

right to settle Indians permanently on the lands mentioned in the agreement, but not to divert the proceeds of the sale of the lands from the Choctaw and Chickasaw nations to other Indians. We can not say that the allotment of 160 acres to each one of the defendant Indians is unreasonable in the establishment of Wichitas and the affiliated bands as permanent settlers, but beyond this the agreement violates the trust. A decree will therefore be entered in conformity with this opinion, following as far as the same may be applicable the form of the decree in the case of The Western Cherokee Indians (27 C. Cls. R., 1) and Journeycake v. The Cherokee Nation (28 C. Cls. R., 281; 30 ibid., 172).

922 PEELLE, J., dissents:

In respect of the claim of the Wichitas, codefendants herein, to the title to the land in dispute by right of original occupancy or "pristine habitat," I concur in the conclusion of the majority of the court, but my view of the case as to the claimants' rights under the treaty of 1866 leads me to dissent from the conclusions reached by the court in their case.

The controversy is as to whether the cession of land by them to the United States under the treaty of 1866, absolute in terms, can be construed by the court, under the special act of our jurisdiction, from external facts and circumstances as a cession in trust.

There are, however, some preliminary questions which I will first notice, though not material in the view I take of the case.

Prior to 1855 the Choctaw and Chickasaw nations of Indians had acquired by treaties in fee simple, subject to occupancy, certain lands west of the Mississippi River, lying between the Red and Canadian rivers, in exchange for certain lands belonging to them east of the Mississippi River. (7 Stat. L., 210, 333–605.)

June 22, 1855, a treaty was entered into between them and the United States (11 Stat. L., 611), by the first article of which the Choctaw and Chickasaw country was defined by certain boundaries east of the one-hundredth degree of west longitude, and pursuant to the act of May 28, 1830 (4 Stat. L., 411), the lands embraced within the limits so described were guaranteed to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, "so that each and every member of either tribe shall have an equal, undivided interest in the whole," with the proviso that the land shall not "be sold without the consent of both tribes," and that in case "the Indians and their heirs shall become extinct or abandon the same" it should revert to the United States.

By article 9 the Choctaws quitclaimed and relinquished "to the United States all their right, title, and interest in and to any and all land west of the one-hundredth degree of west longitude," and by the same article the Choctaws and Chickasaws leased "to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein, excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River and whose permanent localities are north of the Canadian River, but includ-

ng those bands whose permanent ranges are south of the Canadian, or
etween it and the Arkansas, which Indians shall be subject to the exclu-
ive control of the United States, under such rules and regulations, not
nconsistent with the rights and interests of the Choctaws and Chicka-
saws, as may from time to time be prescribed by the President for their
overnment: Provided, however, The territory so leased shall remain
pen to settlement by the Choctaws and Chickasaws, as heretofore."

In consideration of the foregoing relinquishment and lease, the United States, by the provision of article 10, paid to the Choctaws $600,000 and to the Chickasaws $200,000, that being their proportionate interest in the territory leased, as then and thereafter by certain treaties
923 fixed; but what portion of the sums so paid, if any, about which there is a controversy, was in consideration of the relinquishment of the lands west of the one-hundredth degree of west longitude by the Choctaws alone does not appear.

By the treaty of October 18, 1820 (7 Stat. L., 211), the United States had ceded to the Choctaw Nation lands west of the Mississippi River described as follows:

"ART. 2. For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioner of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red rivers, and bounded as follows: Beginning on the Arkansas River where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning."

The controversy grows out of the language of the description—i. e., "thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River."

The source of the Canadian Fork at that time was supposed, from the maps theretofore made, to be at or east of the one hundredth degree west longitude, and therefore the cession by that treaty could hardly have been intended by the parties to include any land west of that line, and, besides, at that time the western boundary of the United States was the one hundredth degree west longitude.

Later maps show the source of the Canadian Fork to be far west of the one hundredth degree west longitude, while the westernmost point of the Red River is about 2 degrees east thereof, so that the line from the source of the Canadian Fork "thence due south to the Red River" could not be run. Hence, it is evident that the parties understood the source of the Canadian Fork to be at or east of the one hundredth degree west longitude, as shown by the maps as they existed in 1820; and inasmuch as subsequent to the treaty of 1820 the United States acquired from Spain the territory west of the one hundredth degree west longitude (8 Stat. L., 251), and thereafter by treaty 1830 (7 Stat. L., 333) the lands so ceded were restricted east of the one hundredth degree west longitude and the provisions of all prior treaties "declared null and void," the

quitclaim and relinquishment of the territory west of that line was evi-
diently to correct or restrict the boundaries thus shown by the maps a
that time.

In transmitting the treaty of 1820 the commissioners appointed t
negotiate it said, among other things, "from an examination of the map
you will find that Little River is about 60 miles above the Great Raft o
Red River, and that we have located the Choctaws as high up the sam
as practicable." From this it is safe to assume that the commissioners
had before them a map at the time of the treaty; and as there is no evi-
dence showing or tending to show that the Choctaws at that time ha
any other or different knowledge on the subject than that shown by th
maps of that day, in evidence I conclude that the western boundary o
the land ceded was understood by the parties to the treaty to be as indi-
cated on said maps. Therefore the relinquishment by the Choctaws o
all their right, title, and interest in and to the lands west of the one
hundredth degree of west longitude was but a correction of the
924 cession of 1820 in conformity with the intention of the parties;
and hence that no part of the $800,000 paid was in consideration
of the relinquishment; and such seems to have been the understanding
of the parties at the time, judging from the proportionate amounts received
for their respective interest in the lands east of the 100° west longitude;
and it also seems to have been the understanding of the Commissioner of
Indian Affairs, as expressed in 1880. (House Ex. Doc., No. 82, Thirty-
sixth Congress, first session, page 3.)

But I do not regard this as material, as it only goes to the question of
the adequacy of the consideration for the leased district, or rather to the
good faith of the United States in thus procuring the relinquishment and
lease, neither of which questions are within the province of judicial inves-
tigation. The good faith of the United States must not only be presumed,
but must be assumed, in all treaty stipulations.

The United States having acquired the leased district for the perma-
nent settlement of the Wichita and other Indians, as specified in article
9 of the treaty of 1855, "subject to the exclusive control of the United
States, under such rules and regulations not inconsistent with the rights
and interests of the Choctaws and Chickasaws as may from time to time
be prescribed by the President for their government," a trust was thereby
created in the United States for the purposes therein set forth.

No term for the leased district was fixed, but as the purpose of the
lease was for "the permanent settlement of the Wichita" and other
Indians as therein provided, the presumption may fairly be indulged
that the Choctaw and Chickasaw tribes parted with their interest in the
lands perpetually, except as to the right reserved under the proviso, i. e.,
"the territory so leased shall remain open to settlement by the Choctaws
and Chickasaws, as heretofore." But this right they had not exercised
up to the time of the treaty of 1866.

Upon the lands thus acquired, and in conformity with the treaty, the
United States located, among others, the Wichita Indians in 1859. They
were located in the northeast corner of the leased district, and while the
boundaries of their reservation were never legally fixed, still the bound-
aries specified in the unratified agreement between them and the Commis-
sioner of Indian Affairs have been accepted as showing the extent of

their reservation, thus allowing them for a permanent settlement and to hunt over about 743,257.19 acres of land, being the lands covered by the agreement of 1891 between the United States and the Wichitas, which is the immediate subject of this litigation.

The district leased, thus held by the United States, containing about 7,713,239 acres, was treated as held in trust for the use and purpose of settling friendly Indians therein, as provided by the treaty of 1855, at least until 1861, when the Choctaws and Chickasaws, doubtless because of their being slaveholders, early declared through their respective legislatures their purpose by resolution (Reb. Rec., vol. 1, p. 682, and vol. 3, p. 585, 587), and soon thereafter allied themselves to the Southern Confederacy by treaty (Conf. Stat. L., pp. 311, 331), and took up arms against the United States (Reb. Rec., vol. 3, pp. 593, 648), and thereby forfeited their rights to annuities and protection from the Government, and also to their lands, and were "considered as at the mercy of the Government," as they were informed at the council at Fort Smith in 1865. (Rep. Commr. Ind. Affs., 1865, p. 34.)

925 However, at the close of the war, slavery having been abolished in the slave States, the United States were desirous of renewing friendly relations with their late rebellious wards, and to this end treaties were entered upon for the purpose of modifying and fixing their rights in respect of the lands ceded to them prior to the civil war, and also of making provision for those persons who had been held by them in slavery.

Preliminary to the treaty of April 28, 1866 (14 Stat. L., 769), a council was held September, 1865, at Fort Smith, Ark., between representatives of the various Indian tribes, including the Choctaws and Chickasaws, and the commissioners on the part of the United States, at which the Indians were informed that new treaties would have to be made, embodying substantially the following propositions:

"1. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and with the United States.

"2. Those settled in the Indian Territory must bind themselves, when called upon by the Government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians in the Territory, and with the United States.

"3. The institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for.

"4. A stipulation in the treaties that slavery or involuntary servitude shall never exist in the tribe or nation, except in punishment of crime.

"5. A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by Government, or such as may be fixed by the Government.

"6. It is the policy of the Government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one consolidated government after the plan proposed by the Senate of the United States for organizing the Indian Territory.

"7. No white person, except officers, agents, and employees of the Government, or of any internal improvement authorized by the Government, will be permitted to reside in the Territory unless formally incorporated with some tribe according to the usages of the land." (Report of Secretary of Interior, 1865, 482.)

There is a controversy between counsel as to the precise language of the fifth proposition. The defendants contend that the language is as given above, while the claimants contend that it was as follows:

Fifth. "A part of the Indian country to be set apart and purchased for the use of such Indians from Kansas or elsewhere as the Government may desire to colonize therein."

The claimants' counsel (Mr. Wilson) says: "That the Commissioner of Indian Affairs, in elucidation of the provisions contained therein with regard to the said fifth provision, addressed them as follows: 'A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes now in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by the Government, or such as may be fixed by the Government.'"

In the above proposition it will be noticed that the lands to be "set apart" were for the Kansas and other Indians; and while in the first the language is that "a portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by the Government," in the other the language is, "a part of the Indian country to be set apart and purchased for the use of such Indians."

926 So that in either case the lands "to be set apart" were to be purchased for the use of such Indians, and whatever doubt may have existed as to who was to pay therefor, as well as what lands were to be thus set apart, was removed when the treaty of April 28, 1866 (14 Stat. L., p. 769), was entered into. Hence to get a correct understanding of the parties we must look to that treaty.

By articles 30, 31, 37 of the treaty last named it is provided that the Choctaw and Chickasaw nations will receive, even before a survey of the lands has been made, "civilized Indians from the tribes known by the general name of the Kansas Indians, being to the north of the Indian Territory, not exceeding 10,000 in number, into their respective districts east of the ninety-eighth degree of west longitude" with "the same rights as the Choctaws and Chickasaws," including the right to select land the same as they—i. e., one quarter section for each person in severalty, in consideration of such sum, not exceeding $1 per acre, as the legislatures of the respective nations may fix, to be paid by the United States out of the funds of such Indians as may remove into said nations.

Those provisions are in accord with the fifth proposition, as contended for by the defendants, and in harmony with the elucidation given thereto by the Commissioner of Indian Affairs at the time as aforesaid. Hence the lands to be so set apart and purchased were designated in article 30 as lands "east of the ninety-eighth degree of west longitude," as the claimants had not "hitherto owned and occupied" lands west of that line; and, besides, the lands so set apart to them east of the ninety-eighth degree of west longitude were equally "Indian country" with those west thereof.

The seventh proposition, to exclude white persons from residing in the Territory "unless formally incorporated with some tribe," is embodied in article 43, which clearly shows that the prohibition is against white persons residing within the Choctaw and Chickasaw nations, which are east of the ninety-eighth degree, west longitude. But as it is averred in paragraph 13 of the petition that all seven of the propositions, except the fifth, are embodied in the treaty of 1866, nothing further need be said with reference to them.

By article 9 of the treaty of 1855, as before stated, the Choctaws and Chickasaws had by lease to the United States parted with their interest in the lands west of the ninety-eighth degree of west longitude, except as stated in the proviso thereto, i. e., "the territory so leased shall remain open to settlement by the Choctaws and Chickasaws as heretofore."

But even this right, as well as any other right or title to lands so leased, they were informed by the commissioners, as hereinbefore stated, they had forfeited by reason of their treaties with the Confederacy and their participation in the rebellion; and upon this theory, whether right or wrong, the treaty of 1866 was entered upon and finally executed.

So that by article 5, treaty 1866, "a general amnesty of all past offenses against the laws of the United States" was declared, while by article 10 it is provided that "the United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith."

927 By the same article the portion of annuities which had been withheld by reason of their participation in the late rebellion was renewed, to begin July 1, 1866.

Subsequent sections provided for a survey at the expense of the Government and division of their lands into severalty; the establishment of a land office, giving to each the right to select 160 acres and provide for the settlement of disputes in respect of such selections, thus showing that the purpose of the Government in relation to these Indians was to limit their right of absolute control, even though prior to the rebellion they held the lands in fee simple subject to occupancy.

Hence the language in article 10 in respect of the reaffirmance by the Government of all claims arising out of treaty stipulations or acts of legislation, "entered into prior to the late rebellion and in force at that time," is limited by the words, "not inconsistent herewith."

The "rights, privileges, and immunities" theretofore possessed by the claimants, as nations and as individuals, under former treaties and acts of Congress were, by article 45, treaty 1866, declared to be in full force only "so far as they were consistent with the provisions" of that treaty. And by article 51 it was provided "that all treaties and parts of treaties inconsistent herewith be, and the same are hereby, declared null and void." Therefore the rights of the claimants as they existed prior to the late civil war were modified and fixed by the treaty of 1866; and by that treaty, which is clear and harmonious, their rights must be determined.

Has a treaty with an Indian tribe or nation the sanctity of an act of Congress, or is it simply an ordinary contract as between individuals?

The Constitution of the United States, article 6, section 2, provides—

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

No distinction is there made between a treaty with a foreign nation and an Indian tribe, and I am aware of none having been made in adjudged cases. On the contrary, in the case of Fellows v. Blacksmith (19 How., 366, 372), in speaking of the objection therein raised to the validity of the treaty with the Tonawanda Band of Indians, because the band was not represented by their chiefs and headmen in the negotiation and execution of the treaty, the court said: "But the answer to this is, that the treaty after executed and ratified by the proper authorities of the Government becomes the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation than they can go behind an act of Congress (1 Cr., 103; 6 Pet., 735; 10 How., 442; 2 Pet., 307, 309, 314; 3 Story Const. Law, p. 695)." And such has been the holding of this court. (Leighton Case, 29 C. Cls. R., 288, 322.)

Up to the time of our revolution Great Britain recognized the Indians in this country "as nations capable of maintaining the relations of peace and war; of governing themselves under her protection; and she made treaties with them, the obligations of which she acknowledged." (Worcester v. The State of Georgia, 6 Pet., 515, 548.)

928 That policy, inherited from Great Britain, was continued by the United States from the time of the first treaty made with the Delawares, September, 1778 (7 Stat. L., 13), until March 3, 1871, now Revised Statutes, section 2079, when for the first time the Congress declared that thereafter a different policy should prevail.

In respect of the right of suffrage under the fourteenth amendment to the Constitution, the Indians have been regarded as foreigners and not entitled to vote unless naturalized, and such has been the action of the political departments of the Government as well as the holding of the courts. (Elk v. Wilkins, 112 U. S., 94–103.)

The Congress, by the Indian depredation act, March 3, 1891 (26 Stat. L., 851), recognize the Indians "as capable of maintaining the relations of peace and war" by making the question of the amity of the tribe, band, or nation to which the depredating Indians belong a jurisdictional fact.

The Congress regard treaties made with the Indian tribes as of equal solemnity with those made with foreign nations, for by Revised Statutes, section 1066, they exclude from the jurisdiction of this court claims against the Government "growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes."

In construing that section of the statute in the case of Great Western Ins. Co. v. United States (112 U. S., 193, 197), affirming the judgment of this court (19 C. Cls. R., 206) in dismissing the petition for want of jurisdiction, the court, by Mr. Justice Miller, said: "This language is comprehensive and explicit. If the cause of action grows out of a treaty stipulation the court can not entertain it. If it is dependent on any such stipulation the same result follows."

Thus the Indians have been recognized as a treaty-making power; and a treaty, therefore, with an Indian tribe is a law of the land, and its provisions, when in controversy in the courts, should be determined by the same rules of interpretation that apply in the construction of acts of Congress. True, by the act of March 3, 1871, now Revised Statutes, section 2079, before referred to, it is provided that "no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty." * * *

But the same section as clearly sanctions all former treaties made therewith by declaring that "no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired."

Inasmuch as the claim in suit grows out of and is dependent on a treaty stipulation entered into with the claimants in 1866, the court's jurisdiction is limited by the special act referring the case to the court, and beyond that the court can not go.

If, therefore, the relief sought in this suit depends upon a modification or reformation of the treaty, the authority therefore must be found in the special act, and such authority should not be inferred, for the reason that, if the treaty itself s a law of the land, then it has equal sanctity with an act of Congress, at least in respect of the rules which should govern in its interpretation, and hence to take it out of the application of such rules, so as to modify or reform the treaty, the authority therefor should expressly appear. (Ex parte Atocha, 17 Wall., 439.)

929 Keeping in view what has been said, let us first look at article 3 of the treaty of 1866 (14 Stat. L., 769), which, as to the cession of the land, is as follows:

"ART. 3. The Choctaws and Chicasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the ninety-eighth degree west longitude, known as the leased district. * * *"

That language is clear and explicit, about which there can be no doubt, and I fail to find any other provision or article in the treaty in conflict therewith or in any way modifying or limiting the cession thus made, or even referring thereto, except in article 46, wherein it is stipulated that of the money to be paid "for the cession of the leased district and the admission of Kansas Indians" certain sums were to be advanced to each nation, to be repaid out of any money due the Indians.

The consideration for the cession has been fully paid to the Choctaws, and there only remains $17,375 due the Chickasaws, dependent on their nation enacting the required legislation in behalf of their freedmen, which has not yet been done.

The claimants herein are in advance of their race in civilization, self-dependent, and self-governing, and many of them are highly educated, and were when the treaty of 1866 was entered into. Therefore, conceding the rule contended for by their counsel, that "the language used in treaties with the Indians should never be construed to their prejudice" (Choctaw Nation v. United States, 118 U. S., 127), still it has no application in this case. Besides, the language used is free from doubt and ambiguity, and not, therefore, "susceptible of a more extended meaning

than their plain import as connected with the tenor of the treaty," and hence needs no interpretation.

Nor is there any need to resort to departmental construction, for, as said by Mr. Justice Brown in the case of United States v. Tanner (147 U. S. R., 661, 663), "it is only in cases of doubt that the construction given to an act by the Department charged with the duty of enforcing it becomes material."

Again, in the case of United States v. Graham (110 U. S. R., 219-221) it was said:

"Such being the case, it matters not what the practice of the Departments may have been or how long continued, for it can only be resorted to in aid of interpretation, and 'it is not allowable to interpret what has no need of interpretation.' If there were ambiguity or doubt, then such a practice, begun so early and continued so long, would be in the highest degree persuasive, if not absolutely controlling, in its effect. But with language clear and precise and with its meaning evident there is no room for construction, and consequently no need of anything to give it aid. The cases this affect' are numerous. (Edwards' Lessee v. Darby, 12 Wheat., 206; United States v. Temple, supra; Swift Co. v. United States, 105 U. S., 691; Ruggles v. Illinois, 108 U. S., 526.)"

Could language be more explicit?

Following the cession of the leased district and in the same article is a proviso to the effect that the United States will invest at interest and hold in trust for the claimants the consideration of $300,000, so expressed to be given for the cession (in the proportion of three-fourths to the Choctaws and one-fourth to the Chickasaws), "until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in said nations at the date of the treaty of Fort
930 Smith, and their descendants heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively; and also to give to such persons who were residents as aforesaid and their descendants forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selection as herein provided."

That done, the money, as in said article provided, was to be paid to the claimants, and if not done within two years from the ratification of the treaty, "then the said sum of $300,000 shall cease to be held in trust for the said Choctaw and Chickasaw nations and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the Territory."

Here is a provision for changing the ceste que trust, but whether the money was paid in the one way or the other no restriction, limitation, or qualification is thereby placed on the cession made and none can be inferred. Whether the same was to be paid to the claimants for the cession, as the language imports, or whether it was intended as a fund to provide for their former slaves, seems to me immaterial, as the purpose and intention of the parties to the treaty in respect of the cession is

clear from the language used, and nothing said before, at the time, or subsequent thereto, can change or add to the meaning anything different from what the language imports any more than an act of the Congress can be so changed.

Nor can the court, in the absence of doubt, look to the language of contemporaneous treaties made with other tribes similarly situated in respect of their alliance with the Confederacy, even though the terms of such treaties be more advantageous, as the court can not inquire into the motives that influenced the treaty-making power any more than it can the motives that influence members of Congress in the enactment of laws. The Choctaws and Chickasaws may have been and perhaps were the most active and influential leaders among the civilized Indians to form an alliance, offensive and defensive, with the Confederacy, and, while "a general amnesty of all past offenses against the laws of the United States" was declared by the treaty of 1866, their rights in and to the lands in question were modified and fixed by the same treaty. Whether it was wise for the treaty-making power so to do is not for the court to determine.

The material language of the special act of Congress of March 2, 1895 (28 Stat. L., 876, 898), referring the claim to the court, is:

"That as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing agreement, which claim is controverted by the United States, jurisdiction be, and is hereby, conferred upon the Court of Claims to hear and determine the said claim of the Choctaws and Chickasaws and to render judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations and the Wichita and affiliated bands of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim. * * * And provided further, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof."

931 That language falls far short of the language used in the special act referring the claim of the Old Settlers (Western Cherokees) to this court. (25 Stat. L., 694.) In that case, reported (148 U. S., 427), the language of the act is "that the claim be referred to the Court of Claims for adjudication; and jurisdiction is hereby conferred on said court to try said claim and determine what sum or sums of money, if any, are justly due from the United States to said Indians, arising from or growing out of treaty stipulations or acts of Congress relating thereto * * * it being the intention of this act to allow the said Court of Claims unrestricted latitude in adjusting and determining the said claim, so that the rights, legal and equitable, both of the United States and of said Indians, may be fully considered and determined, and to try and determine all questions that may arise in such cause on behalf of either party thereto and to render final judgment thereon."

The claimants in that case had acquired, by treaty of 1828 and 1833, lands in the Indian Territory, and the United States thereafter, by treaty of 1835, conveyed the same lands to the Eastern Cherokees, which

caused the Western Cherokees to protest against the invasion of their rights, and thereafter they entered into the treaty of 1846, ceding all their right, title, and interest in and to the lands in dispute; but they claimed that the lands so ceded were procured for a grossly inadequate consideration through fraud and duress.

In their suit in that case they ask, among other things, a decree relieving them from the treaty of 1846 and requiring the United States to compensate them for the value of the lands obtained from the United States notwithstanding the treaty.

Although the provisions of the act, as was said by this court (27 C. Cls. R., 1, 35), "are as broad as language can make them," the statute exceeding "in the measure of its liberality any which was ever enacted for the judicial redress of citizens of the United States," still the court held that it was not thereby authorized to go behind the treaty of 1846 and declare it to have been procured by fraud or duress.

That holding was referred to in the case on appeal (148 U. S. R., 427, 466), and several authorities were cited, among which were those of Fletcher v. Peck (6 Cranch, 87, 130) and Ex parte McCardle (7 Wall., 506, 514), in support of the proposition that the motives which influenced members of the legislative branch of the Government in the enactment of laws are not within the scope of judicial cognizance.

If not, then it follows that the court can not inquire into the motives or acts which may have influenced the commissioners, who were acting for the President on behalf of the United States, in negotiating the treaty they did.

I think the above reference with the authorities cited significant, even though the court held that the proposition "that a court may be clothed with power to annul a treaty on the ground of fraud or duress in its execution" did not arise in the case before them.

The court in substance held that the contention of the Western Cherokees as to their ownership of the lands by virtue of the treaties of 1828 and 1833 was put at rest by the treaty of 1846, that while a treaty might be modified or abrogated by an act of Congress, the "power to make and unmake is essentially political and not judicial."

932 In that same connection the court further said: "The presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision, authorizing the stipulations in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference."

Under the act in that case the court was to have "unrestricted latitude in adjusting and determining the said claim, so that the rights, legal and equitable, both of the United States and of the said Indians, may be fully considered and determined." But this, the court says, "did not mean that either party was entitled to have or receive by virtue of the act anything more than each was entitled to under existing stipulations, or to bring supposed moral obligations into play for the disposal of the case;" that, "if conflict existed between treaty provisions, or between any of them and subsequent acts of Congress, such provisions might necessarily give way and be held invalid; but the language used did not involve a confusion of the respective powers of the departments

of the Government, nor furnish a basis for an external attack upon the validity of an executive or legislative action."

If, under the language of the special act in that case, the court, as was held by this court and sanctioned by the Supreme Court, had no power to annul a treaty on the ground of fraud or duress in its execution, or submit the good faith of the Government to judicial decision, certainly this court, under the act of our jurisdiction, less broad, has no power to correct a mistake not apparent on the face of the treaty, or to change or alter the apparent meaning of the language therein by resorting to extraneous facts. Nor can the act be held as conferring on the court extrajudicial power, since it is provided that either party may appeal to the Supreme Court, whose jurisdiction as defined by the Constitution is strictly judicial. (Gordon v. The United States, 2 Wall., 561; Taney, Ch. J., 117 U. S. R., 697, Appx.; In re Sanborn, 148 U. S. R., 222; Western Cherokee Indians' Case, 27 C. Cls. R., 1, 36.)

The special act of our jurisdiction provides, "that as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the land ceded by the foregoing agreement, which claim is controverted by the United States, jurisdiction is hereby conferred upon the Court of Claims to hear and determine," and, furthermore, it is provided, "that nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof." The agreement referred to is the one made by the United States with the Wichita and affiliated bands of Indians codefendants herein, who are also contesting the claimants' rights.

No reference is made in the act to the treaty of 1866 or to any other treaty, nor is it stated therein, as was done in the Western Cherokee Case (supra), that the claim referred to the court was one growing out of or dependent on treaty stipulations.

It is therefore questionable whether the language of the special act is sufficiently comprehensive to remove the prohibition contained in R. S., section 1066. But considering the act as conferring jurisdiction, the naked question for the court to determine is, whether or not the
933 claimants have, as claimed, "any right, title, and interest in and to the lands ceded" by that agreement.

They claim they have, and base their contention on the theory that notwithstanding they ceded the lands to the United States, absolute in terms, by the treaty of 1866, the same was intended by the parties thereto as a cession in trust for the use of Indians only, and that when the Government ceased to use the land for that exclusive purpose the same reverted to the claimants.

Therefore the claim they assert under the act, though not disclosed therein, grows out of and is dependent on treaty stipulations.

To establish such a trust necessarily involves going behind the treaty of 1866 for the purpose of considering the facts and circumstances which led up to it, as no such conclusion can be reached from the language of the treaty itself. In case of doubt it is permissible for the court to consider the history of the times, but that is not this case. It is not a question of construction, for, as before said, the language of the cession is free from doubt and ambiguity, and therefore needs no interpretation.

The claimants are seeking an interpretation of the treaty from external facts which question the good faith and acts of the treaty-making power. That, I contend, the Congress have not committed to judicial scrutiny or action. Besides, the construction they contend for would amount to a re-formation of the treaty, and that can only be done by applying the rule in equity as between individuals to ordinary contracts in the conveyance of lands—i. e., that a deed conveying a fee may nevertheless be declared a conveyance in trust.

Tested by the rules of law applicable to the case, the claimants have no "right, title, and interest" in and to the lands in controversy, for the reason that by the treaty of 1866 they made, in language importing but one meaning, an absolute cession thereof to the Government; and their rights being fixed by that law, equity will not intervene to relieve them from the consequences of their own act.

We can not presume that Congress intended by the act to confer on the court a jurisdiction broader or different from that expressed therein, and in the absence of conflict between the act and the treaty the latter must stand without amendment or alteration.

In the case of The Amiable Isabella (6 Wheat., 1, 71), the court, by Mr. Justice Story, says:

"In the first place, this court does not possess any treaty-making power. That power belongs, by the Constitution, to another department of the Government, and to alter, amend, or add to any treaty by inserting any clause, whether small or great, important or trivial, would be on our part an assumption of power, and not an exercise of judicial functions. It would be to make and not to construe a treaty. Neither can this court supply a casus omissus in a treaty any more than in a law. We are to find out the intention of the parties by just rules of interpretation applied to the subject-matter, and having found that, our duty is to follow it as far as it goes, and to stop where that stops, whatever may be the imperfections or difficulties which it leaves behind."

Could language be more explicit? Is it within the power of the court under the act of our jurisdiction to "alter, amend, or add to" the treaty by inserting therein words, however "important or trivial," that would change the meaning and purpose of the cession? And, too, by accepting as evidence therefor admissions made before and after the execu-
934 tion and ratification of the treaty by the agents and officers of the Government against its interest?

Waters Case (4 C. Cls. R., 390, 391). Whiteside et. al. v. United States (93 U. S., 247).

To do so would be "an assumption of power and not an exercise of judicial functions."

If the treaty referred to were an act of Congress, would there be any controversy about the position stated?

Nor is the language of the special act enlarged by reason of the provision concerning the admissibility of evidence. It is provided therein that the "court shall receive and consider as evidence in the suit everything which shall be deemed by said court necessary to aid it in determining the questions presented and tending to shed light on the claim, rights, and equities of the parties litigant." That language is limited by the words "which shall be deemed by said court necessary to aid it in

etermining the questions presented," etc. Of course the court, in the bsence of any specified class of evidence in the act, must be bound by he ordinary rules of evidence, so that the general provision can not be onstrued to enlarge the scope of evidence nor to confer on the court xtrajudicial power. (Moore v. United States, 91 U. S., 270.)

Therefore, for the reasons stated, I conclude that the Congress have ot, by the special act, conferred upon this court jurisdiction to re-form, lter, amend, add to, or go behind the treaty of 1866, or to change the meaning of the language evident on its face.

It may be that the claimants were wronged by the cession of the land under the treaty of 1866, but, if so, their remedy is with the political departments of the Government and not with the judiciary, at least not until the Congress by definite and unmistakable language shall authorize the court to enter that field.

True, by the appropriation act of March 3, 1891, section 15 (26 Stat. L., 989, 1025), the Congress, in making appropriations to pay the Choctaws and Chickasaws for land similarly occupied by the Cheyenne and Arapahoe Indians within the district of lands so ceded by the claimants to the United States, did declare that the lands so occupied by the Cheyenne and Arapahoe Indians had "been ceded in trust by article 3 of the treaty between the United States and said Choctaw and Chickasaw nations." But thereafter, and before the passage of the act of our jurisdiction, by joint resolution, January 18, 1893 (27 Stat. L., 753), to correct an error in the amount so appropriated, before payment, Congress added the proviso thereto as follows:

"Provided, however, That neither the passage of the original act of appropriation to pay the Choctaw and Chickasaw tribes of Indians for their interest in the lands of the Cheyenne and Arapahoe Reservation, dated March third, eighteen hundred and ninety-one, nor of this resolution, shall be held in any way to commit the Government to the payment of any further sum to the Choctaw and Chickasaw Indians for any alleged interest in the remainder of the land situated in what is commonly known and called the 'leased district.'" (Joint Res. of Jan. 18, 1893, 27 Stats., 753.)

So that whatever effect the appropriation act may have had by way of legislative construction of the treaty of 1866 was taken away by the joint resolution in respect of any further payment to the claimants for the remainder of the lands, and is not therefore a construction
935 obligatory on the court or even persuasive; and such was manifestly the purpose of Congress by the proviso in the joint resolution, otherwise they would doubtless have adhered to and followed the precedent established by their own action and made an appropriation of a sum adequate, in their judgment, to compensate the claimants for the lands in dispute, instead of referring the claim to this court by an act in which they expressly say that nothing therein "shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof."

That language, in connection with the language in the proviso quoted above, makes it clear that what Congress intended was that this court should determine the rights of the claimants in and to the lands in dispute, untrammeled by their declaration that the cession under the treaty

of 1866 was a trust, and I have so considered the case, and reached the conclusion that the claimants' petition should be dismissed.

It follows that the agreement entered into between the United States and the Wichita and affiliated bands of Indians set forth in the act March 2, 1895 (28 Stat. L., 895, 897), ratifying said agreement, should be carried out as therein provided, aided by said act.

936 *Decree of the Court.—Filed March 21, 1899.*

THE CHOCTAW NATION AND THE CHICKASAW Nation, claimants,
v.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

This cause coming on to be heard upon the petition, answers, proofs, and arguments submitted by the parties respectively, and the court having heard the same and duly considered the rights, legal and equitable, of the respective parties in and to the lands in controversy herein described as follows, to wit:

"Commencing at a point in the middle of the main channel of the Washita River where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of 98° 40′ west longitude, thence on said line of 98° 40′ due north to the middle of the channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian, thence due south to the place of beginning."

And it appearing to the court that by the treaties between the
937 United States and the Choctaw Nation or tribe of Indians, and the treaties between the United States and the Choctaw and Chickasaw nations or tribes of Indians, the lands above described were acquired by the United States in trust for the settlement of Indians thereon, and in trust and for the benefit of said claimant Indians when the trust aforesaid shall cease, and it further appearing to the court that the said Wichita and affiliated bands of Indians were by the United States located within the boundaries of the lands hereinbefore described, and that they, the said Wichitas and affiliated bands, now number not more than one thousand and sixty persons; and it further appearing to the court that the said location of said Wichitas and affiliated bands within said boundaries was for the purpose of affording them permanent settlement therein, it is ordered, adjudged, and decreed that the lands hereinbefore described were acquired and are now held by the United States in trust for the purpose of settling Indians thereon; that they are held by the United States subject to the purposes and conditions
938 of such trust, and that whenever such purpose shall be abandoned, as to the whole or any part of such lands, then as to all the lands not so devoted to Indian settlement that they be held in trust by the United States for the said Choctaw and Chickasaw Indians exclusively.

And it is further adjudged and decreed that the members of said Wichita and affiliated bands, not exceeding one thousand and sixty, are equitably entitled to one hundred and sixty acres of land each out of the

ands hereinbefore described, and that the same shall be set apart to them
y the defendants, the United States, having due regard to any improve-
ents made thereon by them, respectively, for their permanent settlement.

And it is further adjudged and decreed that the said Choctaw and Chick-
saw nations are in law and equity entitled to and are the owners of the
remainder of said above-described lands, after satisfying the provisions
herein for the Wichitas and affiliated bands, and, in the event of the sale
thereof by the United States, that they shall be entitled to and shall receive
from the United States the proceeds of such sale.

BY THE COURT.

939 *Application of the defendants, the United States, for, and allowance of, appeal.*

THE CHOCTAW NATION AND THE CHICKASAW Nation
vs.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians.
No. 18932.

From the decree rendered in the above-entitled cause on the 21st day of March, 1899, in favor of claimants, the United States, by their Attorney-General, on the 5th day of April, 1899, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed April 5, 1899.

And now, May 22, 1899, on the motion of L. A. Pradt, Assistant Attorney-General, on behalf of the United States, the foregoing application for appeal is allowed as prayed for.

BY THE COURT.

940 *Application of the defendants, the Wichita and affiliated bands of Indians, for, and allowance of, appeal.*

THE CHOCTAW NATION AND THE CHICKASAW Nation,
vs.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians.
18932.

From the decree rendered in the above-entitled cause on the 21 day of March, 1899, in favor of the claimants, the defendants, the Wichita and affiliated bands of Indians, by their attorneys, Josiah M. Vale and Andrew A. Lipscomb, on the 8th day of May, 1899, make application for, and give notice of, an appeal to the Supreme Court of the United States.

J. M. VALE,
ANDREW A. LIPSCOMB,
Attorneys for said defendants.

PHILIP WALKER,
W. C. SHELLEY,
Counsel.

Filed May 8, 1899.

And now, May 22, 1899, on the motion of Andrew A. Lipscomb, esq., attorney for the defendant Indians, the foregoing application for appeal is allowed as prayed for.

BY THE COURT.

941 *Application of the claimants, the Choctaw Nation and the Chickasaw Nation, for, and the allowance of, appeal.*

THE CHOCTAW AND CHICKASAW NATIONS, claimants,
vs.
THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians, defendants. } No. 18932.

From so much of the judgment rendered in the above-entitled cause on the 21st day of March, 1899, as found in favor of the defendants, the claimants, by their attorneys, on the 19th day of May, 1899, make application for, and give notice of, an appeal to the Supreme Court of the United States.

J. M. WILSON,
Attorney for the Choctaw Nation.
H. E. PAINE,
Attorney for the Chickasaw Nation.

Filed May 19, 1899.

And now, May 22, 1899, on the motion of J. M. Wilson, esq., and H. E. Paine, esq., attorneys for the claimants, the foregoing application for appeal is allowed as prayed for.

BY THE COURT.

942 In the Court of Claims.

THE CHOCTAW NATION AND THE CHICKASAW NATION, claimants,
vs.
THE UNITED STATES AND THE WICHITA and affiliated bands of Indians, defendants. } No. 18932. In equity.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of evidence, of the opinion of the court, of the dissenting opinion, of the application of the several parties for appeal to the Supreme Court of the United States, and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims at Washington City, this 13th day of June, A. D. 1899.

[SEAL.]

JOHN RANDOLPH,
Asst. clerk Court of Claims.

943 In the Supreme Court of the United States.

October term, 1899.

THE UNITED STATES, APPELLANT,
v.
THE CHOCTAW NATION AND THE CHICKASAW NATION. } No.

To JAMES H. MCKENNEY, Esq.,
Clerk of the Supreme Court of the United States.

SIR: In accordance with rule 10, section 9, I beg to submit herewith a statement of the errors upon which the United States intends to rely on its appeal, and of the parts of the record which I think necessary for the consideration thereof, to wit:

Assignments of error.

The Court of Claims erred—

1. In assuming jurisdiction to go behind the plain and ambiguous words of cession in Article III of the treaty of April 28, 1866, and to inquire whether the cession, absolute on its face, was intended to establish a trust, as to the lands ceded, in favor of the parties ceding them.

2. In holding that the country ceded by the Quapaws to the United States by the treaty of August 24, 1818, extended west of the one hundredth meridian.

3. In holding that the country ceded by the United States to the Choctaws by the treaty of October 18, 1820, extended west of the one hundredth meridian.

4. In holding that the treaty of September 27, 1830, between the United States and the Choctaws, did not annul any cession of lands
944 west of the one hundredth meridian, supposing such cession to have been made by the treaty of October 18, 1820.

5. In holding that the United States by the treaty of June 22, 1855, recognized that the Choctaws had any real right, title, or interest in lands west of the one hundredth meridian, and that the sum of $800,000 paid by the United States to the Choctaws and Chickasaws under that treaty, was not paid exclusively for the lease of the country between the ninety-eighth and one hundredth meridians.

6. In holding that the fifth stipulation, announced by the commissioners at the Fort Smith council in 1865, was not embodied in Articles XXX, XXXI, and XXXVII of the treaty of April 28, 1866, with the Choctaws and Chickasaws.

7. In holding that the cession of the territory west of the ninety-eighth meridian, known as the leased district, by the Choctaws and Chickasaws, made by the said treaty of April 28, 1866, was not absolute.

8. In holding that the cession of the said territory, made by the said treaty, was made upon a trust of such a character that the sale of the unallotted portion of the Wichita Reservation would constitute a breach of the trust, even though such sale should be made for the benefit of the Wichita and affiliated bands of Indians located upon the said reservation.

9. In entering a decree that the Choctaw and Chickasaw nations are in law and equity entitled to and are the owners of the unallotted portion of the Wichita Reservation, and that in the event of the sale of such unallotted portion by the United States, they shall be entitled to, and shall receive from the United States, the proceeds of such sale.

945 PORTIONS OF RECORD TO BE PRINTED.

The portions of the record which should be printed for the consideration of the above errors are as follows:

The petition; the answer of the Wichita and affiliated bands; and the answer of the United States.

Evidence introduced by the Choctaw and Chickasaw nations.

Deposition of Cyrus Bussey.

Claimants' exhibits:

No. 28. Map 38 in volume 2 of De l'Isle's Atlas Nouveau.

No. 29. Map No. 5 of volume 1 of De l'Isle.

No. 30. Map 39 of volume 2 of De l'Isle.

No. 34. Map No. 28 of volume 2 of De l'Isle.

No. 35. Boelme's map, being map No. 18 of volume 1 of Old American Maps.

No. 40. Extracts from the deposition of Clous.

Claimants' exhibits in rebuttal:

No. 28. Bowen's map.

No. 31. Jefferys' map, No. 5, of Jefferys' American Maps.

Nos. 32 and 53. Le Rouge's map, No. 3.

No. 125. Papers relating to the Fort Smith council of 1865, with the objections filed in regard thereto by counsel for the United States and by counsel for defendant Indians.

Evidence introduced by the Wichita and affiliated bands:

Extract (translated) from Le Page du Pratz's History of Louisiana.

The extracts (translated) from Volume III of Margry's Decouvertes, etc.

Clark's report of the names and number of the Indians in Missouri Territory, November 4, 1816.

Chouteau's Notes of the Indians of North America, February 21, 1816, with accompanying map.

Major S. H. Long's report of January 30, 1818.

Letter of J. H. B. Latrobe to the Commissioner of Indian Affairs, April 4, 1866.

946 Extracts from the laws of the Choctaw Nation, containing the unsigned treaty of 1865, and the statute authorizing the appointment of commissioners to treat with the United States in 1866.

Evidence introduced by the United States:

Call on the War Department of April 17, 1897, with the endorsements on the same, and Major Long's report of September 14, 1820.

Call on the War Department of May 1, 1897, with endorsements on the same, and Secretary Calhoun's letter of December 12, 1820.

Call on the War Department, May 24, 1897, with the endorsements on the same, and the first and last paragraphs, and the statement as to the discovery of the Canadian in Major S. H. Long's report of February 20, 1821.

The Commissioner of Indian Affairs' report of September 28, 1897, in regard to payments to the Choctaw and Chickasaw nations.

Humboldt's Carte Géneralé du Royaume de la Nouvelle Espagne, Paris, 1811.

Pike's chart of the internal part of Louisiana, plates 1 and 2.

Arrowsmith's map of Louisiana, 1816.

Pinkerton's map of the Spanish possessions in North America, Philadelphia, 1818.

Melish's map of the United States, 1818.

Paul's map of the Quapaw cession on the Quapaw treaty, 1818.

Darby's map of the United States, including Louisiana, 1818.

(N. B. In reproducing (to scale) the maps of Humboldt, Melish, Arrowsmith, Pinkerton, and, perhaps, Darby, it will only be necessary to reproduce that portion of the map which was shown in the photographs filed as exhibits in this case.)

Copies of this statement have been served upon J. M. Wilson, esq., counsel for the Choctaw Indians, etc., and A. A. Lipscomb, esq., counsel for the Wichita Indians, etc., whose appearance in the cases I understand has been entered.

Respectfully,

CHARLES C. BINNEY,
Special Attorney.

JUNE 30, 1899.

947 (Indorsed:) File No., 17451. Supreme Court U. S. October term, 1899. Term No., 337. The United States, appt., vs. The Choctaw Nation & the Chickasaw Nation. Statement of errors & designation by appellant of parts of record to be printed. Filed June 30, 1899.

948 Supreme Court of the United States.

October term, 1899.

THE UNITED STATES, APPELLANT, *vs.* THE CHOCTAW NATION AND THE CHICKASAW Nation. } No. 337.

To JAMES H. MCKENNEY,
Clerk Supreme Court of the United States.

SIR: In response to the assignment of errors and designation by counsel for the United States of the parts of the transcript of record to be printed for the hearing, I, as counsel for the Choctaw Nation, and on behalf of counsel for the Chickasaw Nation, designate to be printed those parts of said transcript not designated by said counsel for the United States, so that the entire transcript as filed may be printed.

And in respect of the appeal by the Choctaw and Chickasaw nations (No. 339) assigned for error the following, to wit:

The court erred in decreeing one hundred and sixty acres of the land to each member of the Wichitas and affiliated bands of Indians.

Resp'y,

J. M. WILSON,
Atty. of the Choctaws.
H. E. PAINE,
Atty. of the Chickasaws.
By J. M. WILSON, *Atty.*

949 (Indorsed:) File No., 17451, &c. Supreme Court U. S. October term, 1899. Term Nos., 337, 338, 339. The United States, appt., v. The Choctaw Nation et al. The Wichita and affiliated bands of Indians, appts., vs. The Choctaw Nation et al. The Choctaw Nation et al., appts., v. The United States et al. Designation by the Choctaw and Chickasaw nations of parts of record to be printed and assignment of error in No. 339. Filed August 23, 1899.

950 In the Supreme Court of the United States.

October term, 1899.

THE UNITED STATES, APPELLANT, *vs.* THE CHOCTAW NATION AND THE CHICKASAW NATION.	No. 337.
THE WICHITA AND AFFILIATED BANDS OF Indians, appellants, *vs.* THE CHOCTAW NATION AND THE CHICKASAW Nation and the United States.	No. 338.
THE CHOCTAW NATION AND THE CHICKASAW Nation, appellants, *vs.* THE UNITED STATES AND THE WICHITA AND affiliated bands of Indians.	No. 339.

Stipulation.

It is hereby stipulated and agreed by and between the counsel representing the parties to the above appeals, and in behalf of said parties, that in the printing of the record on file in these appeals the title pages, or covers, of the various exhibits of the claimants and of the defendant Indians shall be omitted.

951 The following exhibits of the defendant Indians shall also be omitted, being all the subject of judicial notice, as contained in official publications, and having been inadvertently included in the record:

No. 4, being found in American State Papers, Indian Affairs, Vol. I, pp. 721–730.

No. 24, being extracts from Indian treaties made in 1866.

The certified copies of the letters of William Clark to the Secretary of War, dated February 6, 1818, and of William Clark and Auguste Chouteau to the same, dated September 6, 1818, being found in American State Papers, Ind. Affs., Vol. II, pp. 173, 177.

Exhibit No. 7 shall be printed from an electrotype to be furnished by counsel for the Wichita and affiliated bands.

Exhibit No. 17 shall be omitted, being covered by claimants' Exhibit No. 23.

Of the evidence for the United States the printed extracts from the port of Major S. H. Long to the Secretary of War, dated February 20, 21, shall also be omitted, as the entire report is in the record and will printed.

CHARLES C. BINNEY,
Special Attorney for the United States.
J. M. WILSON,
Attorney for the Choctaw Nation.
H. E. PAINE,
Attorney for the Chickasaw Nation.
A. A. LIPSCOMB,
Attorney for the Wichita and Affiliated Bands.

52 (Indorsed:) File No., 17451, &c. Supreme Court U. S. October term, 1899. Term Nos., 337, 338, 339. U. S. v. hoctaw Nation; Wichita, &c., Indians vs. same, and U. S. v. Wichita ndians. Stipulation to omit certain parts of record in printing. Filed ct. 10, 1899.

(Indorsement on cover:) File No., 17451. Court of Claims. Term o., 337. The United States, appellant, vs. The Choctaw Nation and he Chickasaw Nation. File No., 17452. Term No., 338. The Wichita nd affiliated bands of Indians, appellants, vs. The Choctaw Nation and he Chickasaw Nation and the United States. File No., 17453. Term o., 339. The Choctaw Nation and the Chickasaw Nation, appellants, s. The United States and the Wichita and affiliated bands of Indians. iled June 30, 1899.

614 (EXHIBIT .)

EXTRACTS FROM CONSTITUTION AND LAWS OF THE CHOCTAW NATION, TOGETHER WITH THE TREATIES OF 1855, 1865, AND 1866.—New York City, 1869.

[In the library of the Office of Indian Affairs.]

(pp. 407–413:)

Articles of agreement entered into this 13th day of September, 1865, between the commissioners designated by the President of the United States and the persons here present representing or connected with the following-named nations and tribes of Indians, viz: Cherokees, Creeks, Choctaws, Chickasaws, Osages, Seminoles, Senecas, Senecas and Shawnees, and Quapaws.

Whereas the aforesaid nations and tribes, or bands of Indians or portions thereof, were induced by the machinations of the emissaries of the so-called Confederate States to throw off allegiance to the Government of the United States, and to enter into treaty stipulations with the said so-called Confederate States, whereby they have made themselves liable to a forfeiture of all rights of every kind, character, and description, which had been promised and guaranteed to them by the United States; and whereas the Government of the United States has maintained its supremacy and authority within its limits; and whereas it is the desire of the Government to act with magnanimity with all parties deserving its clemency, and to reestablish order and legitimate authority among the Indian tribes; and whereas the undersigned representatives or parties connected with said nations and tribes of Indians have been satisfied that it is for the general good of the people to reunite with and be restored to the relations which formerly existed between them and
615 the United States, and as indicative of our personal feelings in the premises, and of our several nations and tribes, so far as we are authorized and empowered to speak for them; and whereas questions have arisen as to the status of the nations, tribes, and bands that have made treaties with the enemies of the United States, which are now being discussed, and our relations settled by treaty with the U. S. commissioners now at Fort Smith, Ark., for that purpose:

The undersigned do hereby acknowledge themselves to be under the protection of the United States of America, and covenant and agree that hereafter they will, in all things, recognize the Government of the United States as exercising exclusive jurisdiction over them, and will not enter into any allegiance or conventional arrangement with any State, nation, power, or sovereign whatsoever; that any treaty of alliance for cession of land or any act heretofore done by them or any of their people by which they renounce their allegiance to the United States is hereby revoked, cancelled, and repudiated. In consideration of the foregoing stipulations made by the members of the respective nations and tribes of Indians present, the United States, through its commissioners, promises: That it will reestablish peace and friendship with all the nations and tribes of Indians within the limits of the so-called Indian country; that it will afford ample protection for the security of the persons and property of the respective nations or tribes, and declares its willingness to

enter into treaties to arrange and settle all questions relating to and growing out of former treaties with said nations, as affected by any treaty made by said nations with the so-called Confederate States, at this council now convened for that purpose, or at such time in the future as may be appointed.

616 In testimony whereof the commissioners, on the part of the United States, and the said Indians of the several nations and tribes, as respectively hereafter enumerated, have hereunto subscribed their names and affixed their seals on the day and year first above written.

AN ACT entitled "An act approving the action of the Choctaw commissioners in signing a preliminary treaty with the commissioners of the United States."

Whereas articles of agreement, as contained in the foregoing articles, were entered into between D. N. Cooley, Eli S. Parker, Elijah Sells, and Thomas Wister, on the part of the United States, and R. M. Jones, Sampson Folsom, F. Battiest, Wm. Roebuck, Forbis Leflore, A. Wright, P. Folsom, John Page, James Riley, Wm. B. Pitchlynn, Samuel Garland, A. Wade, D. F. Harkin, and Coleman Cole, Choctaw commissioners, at the day and year therein named, with the explanation, on the part of the United States commissioners, that the United States Government did not claim, by the words "exclusive jurisdiction in all things," the right to interfere with the local or tribal regulations of the Choctaw and Chickasaw nations, except as to the subject of slavery:

Now, therefore, be it known that the Choctaws, in general council assembled, having duly considered said articles of agreement and convention and each and every clause thereof, and being satisfied therewith, together with the explanations attached thereto by the United States commissioners, do, upon their part, hereby assent to, ratify, and confirm the same as stipulated and required.

Approved, October 7, 1865.

617 *Resolutions approving the action of the commissioners appointed to negotiate with the U. S. commissioners at Fort Smith, Arkansas.*

Be it resolved by the general council of the Choctaw Nation assembled, That the report of the proceedings of the Choctaw and Chickasaw commissioners at Fort Smith, Arkansas, in reference to their negotiations with the United States commissioners, having been fully examined, the same be, and is hereby, approved.

Draft of treaty submitted by the United States commissioners at Fort Smith. (*Not signed.*)

Articles of agreement and convention between the United States and the Choctaw and Chickasaw tribes of Indians, made and concluded at Fort Smith, Arkansas, the day of September, A. D. 1865, by D. N. Cooley, Elijah Sells, Eli S. Parker, and Thomas Wistar, commissioners on the part of the United States, and the delegates of the Choctaw and Chickasaw tribes of Indians, signing this instrument.

ART. 1. Peace and friendship are hereby firmly established between all the citizens of the United States and all the individuals composing the

foresaid tribes; and all the friendly relations that existed between them before the rebellion shall be, and the same are hereby, renewed.

518 ART. 2. The Choctaw and Chickasaw tribes of Indians do hereby bind themselves to use their influence, and whenever called upon by the Government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians of the Territory, and with the United States.

ART. 3. The Choctaw and Chickasaw tribes of Indians hereby admit that the institution of slavery is abolished, and that slavery or involuntary servitude shall never hereafter exist in either tribe, except in punishment of crime, whereof the party shall have been duly convicted, and they promise and agree that measures shall be immediately taken by their respective national councils to properly provide for such emancipated slaves as may have belonged to the members of the respective tribes; such provision to be subject to the approval of the President of the United States.

ART. 4. The Choctaw and Chickasaw tribes of Indians hereby agree to open their country to the settlement of friendly Indians from Kansas and elsewhere, upon such terms as may hereafter be agreed upon by the respective parties and approved by the Government, and the Government may settle such friendly Indians on a portion of said Territory east of the ninety-eighth degree west longitude, not necessary for the use of said Choctaw and Chickasaw tribes, as it may desire, not exceeding one-third of the whole remaining Territory, for a fair and equitable consideration, to be fixed by the Government.

519 ART. 5. The Choctaw and Chickasaw tribes agree to a modification of the 9th article of the treaty concluded at the city of Washington the 22d day of June, A. D. 1855, by which they agree that all that portion of their common territory west of the ninety-eighth degree west longitude, leased to the United States, may be used for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate thereon, without exception or restriction as to the character of the tribes.

ART. 6. The Choctaw and Chickasaw tribes of Indians promise and agree to submit and recommend, at the first meeting of their respective general councils, the adoption of the plan proposed in Senate bill 459, 38th Congress, 2d session, to provide for the consolidation of the Indian tribes, and to establish civil government in the Indian Territory; it being understood to be the settled policy of the Government of the United States that all the nations and tribes in the Indian Territory be formed into one consolidated government, after the plan proposed in the bill above referred to, adopted by the United States Senate 1865, the Government of the United States reserving said right.

ART. 7. The United States, in the event of the adoption by the Choctaw, Chickasaw, and other Indian tribes of the government proposed to be established in the Indian Territory referred to in the preceding article, promise and agree that no white person, except officers, agents, and employes of the Government, and of any internal improvement authorized by the Government, will be permitted to go into and settle in said Territory, unless formally incorporated and naturalized into one of the resident tribes, according to their laws, customs, and usages.

620 ART. 8. The Choctaw and Chickasaw tribes of Indians, anxious for the restoration and preservation of kind and friendly feelings among themselves, do hereby declare a general amnesty of all past offenses, either against their government or the Government of the United States, and no Indian or Indians shall be proscribed, or any act of forfeiture or confiscation passed against those who may have remained friendly and loyal to the United States, but they shall all enjoy equal privileges with other members of said tribes.

ART. 9. The United States hereby promise and agree to restore the Choctaw and Chickasaw tribes of Indians to all their rights and privileges in lands and annuities that they were possessed of and entitled to, and they shall be applicable to the same objects as existed at the breaking out of the rebellion, except such part or parts of annuities and moneys as have been expended by the President in providing for the relief of destitute Indians who were reduced to want on account of their friendship to the Government of the United States, which shall not be refunded.

ART. 10. It is hereby mutually agreed that all of the provisions of the treaty of June 22d, 1855, between the United States and the Choctaw and Chickasaw tribes of Indians not inconsistent with the foregoing articles are hereby adopted and made a part of this instrument.

ART. 11. The Choctaw and Chickasaw tribes of Indians expressly agree that any amendment to this treaty which the Senate of the United States may make shall be taken and held as a part of the same, and as binding in every respect as if it had, after being made, been formally submitted to and ratified by such parties.

621 (p. 450):

Whereas the Senate of the United States did on the 28th day of June, A. D. 1866, advise and consent to the ratification of the articles of agreement and convention between the United States and the Choctaw and Chickasaw commissioners, and the same having been confirmed by the President of the United States on the 10th day of July following; and whereas the same having been submitted to the general council of the Choctaw Nation and having been interpreted and fully explained: Therefore,

SEC. 1. Be it enacted by the general council of the Choctaw Nation assembled, That the report of Choctaw Commissioners and all their acts respecting the negotiations of the late treaty, made and concluded at Washington City between the United States and the Choctaw and Chickasaw nations of Indians be, and the same is hereby, received and approved.

SEC. 2. Be it further enacted, That the propositions contained in the 3d and 8th articles of the treaty are hereby deferred until the next regular session of the general council, and the 11th and 47th articles are hereby referred to the people at large to be declared through their legal representatives in council at the October session, A. D. 1867, and the principal chief is hereby required to issue his proclamation when he shall think expedient, calling the votes of the people, the specified articles above.

SEC. 3. Be it further enacted, That this act take effect and be in force rom and after its passage.

Approved, December 21, 1866.

622 (pp. 478–480:)

AN ACT entitled "An act to authorize the national attorney to attend to the claims set up against the nation under 49th and 50th articles of the treaty of April 28th, 1866, and for other purposes."

SEC. 1. Be it enacted by the general council of the Choctaw Nation assembled, That the present national attorney be, and is hereby, required to proceed to Washington City as soon as possible and appear before his honor the Secretary of the Interior, and file such arguments as he may deem essential to make touching the origin and present of the claims awarded by Messrs. Rice and Jackson, under the 49th and 50th articles of the treaty of April 28th, 1866, and insist upon the importance of having a new commission raised to investigate the said claims, in order to enable this nation to introduce rebutting testimony.

SEC. 2. Be it further enacted, That if in the opinion of the said Secretary of the Interior that a new commission to investigate the claims aforesaid can not be ordered without the action of Congress, or by consent of parties to the case, then, in that event, the national attorney shall exercise his best judgment and discretion in the premises, and report the facts to the principal chief.

SEC. 3. Be it further enacted, That the national attorney be, and is hereby, instructed to respectfully bring to the notice of the Commissioner of Indian Affairs at Washington City that this nation will not consent to give the freedmen residing among them the forty-acre lots of land,
623 including the right of suffrage mentioned in the 3d article of the treaty of April 28th, 1866, when they have submit' humbly to the forced sale of the "leased district" lying west of 98th degree west longitude, for about two and a half cents per acre, for objects of negro colonization upon their borders; and he shall also request the said Commissioner of Indian Affairs to provide in due time for said freedmen for their removal to some country, and remove Kansas Indians here in their stead, if they are willing to be removed.

SEC. 4. Be it further enacted, That said attorney shall use his best endeavors to delay and defer the Territorial organization contemplated under article 8th of treaty of April 28th, 1866, until such time as the several nations composing the Indian country shall become more friendly and more disposed to unite and come under one head, or, in other words, under one form of government, to be controlled by the Congress of the United States, and shall have become more qualified to take good care of their landed interest than the present state of feeling seems to exist between the citizens of each nation in regard to the whole policy of coming under a Territorial government. The Government at Washington must understand that the habits and customs of Indian nation can not be easily changed, whether for weal or woe, without their consent.

SEC. 5. Be it further enacted, That in order to provide against contingencies that might occur during the prosecution of the duties herein required of the national attorney, there shall be elected by joint ballot of both houses of the present session of the general council an assistant attorney, whose duty shall be to aid and assist the principal
624 attorney in all matters touching the interest and welfare of this nation, specially the claim set up by "Loyal Indians" under 49th

and 50th articles of said treaty, and whose terms of service shall expire with the adjustment of all the claims herein specified, and who shall act as principal attorney when so required by the principal national attorney. It is agreed and understood by this act that the nation will only defray actual expenses of traveling and other incidental expenses to and from Washington City, for each of the attorneys mentioned in this act, at three dollars per day each and expenses paid, and hereby agree to give them one-half of the amount that they may recover or save for the nation upon the claims arising under 49th and 50th articles of the treaty of April 28th, 1866, other than the "net proceed question;" and it is also understood that should they employ claim agent or counsel to answer for them in any given case, it shall be done at their own expense and responsibility.

SEC. 6. Be it further enacted, That a correct statement of all the acts, proceedings, accounts, and correspondences had upon the business herein intrusted to the national attorney shall be kept by his assistant, and who shall make his report upon the same to the principal chief of this nation.

SEC. 7. Be it further enacted, That the principal chief is hereby requested to authenticate the credentials of each of the national attorneys herein mentioned to the Commissioner of Indian Affairs at Washington City.

SEC. 8. Be it further enacted, That this act take effect and be in force from and after its passage.

Repassed the senate by two-thirds vote.

November 20th, 1867.

Repassed the house of representatives by two-thirds vote.

November 20th, 1867.

625 "EXTRACTS FROM CONSTITUTION, LAWS, AND TREATIES OF THE CHICKASAWS."—Fort Smith, 1867.

(pp. 100–101:)

AN ACT appointing delegates to Washington.

SEC. 1. Be it enacted by the legislature of the Chickasaw Nation, That the governor of the Chickasaw Nation be, and he is hereby, requested and authorized to appoint and commission three competent persons, by and with the advice and consent of the senate, as delegates, to visit Washington City during the next session of Congress, with full and efficient powers to reconstruct or enter into new treaties or conventions with the United States of America, or any authorized agents thereof, necessary and proper in their judgment to obtain full guarantees and securities of all the rights, interests, or claims held by the Chickasaw Nation, or any individual member thereof, under former treaty stipulations with the Government of the United States, whereby the happiness and interests of the Chickasaw people may be advanced.

SEC. 2. Be it further enacted, That the governor of the Chickasaw Nation be, and he is hereby, requested to accompany said delegation, to render all the assistance and advice necessary in the prosecution of their negotiations, and be entitled to the same pay as hereinafter provided for said delegation.

SEC. 3. Be it further enacted, That the delegates shall be entitled each to the sum of twelve hundred dollars out of any money that may be due

now or may hereafter be due the Chickasaw Nation, and five
626 hundred dollars each to defray the expenses in going to and returning from Washington, and during their stay there, as full compensation for their services as delegates.

SEC. 4. Be it further enacted, That the governor of the Chickasaw Nation be, and he is hereby, authorized and empowered to raise, upon the faith and credit of the Chickasaw Nation, a sufficient amount of money to defray the expenses of the delegation to Washington City; said amount to be refunded out of the first monies due the nation.

SEC. 5. Be it further enacted, That in case of death, resignation, or inability of either of said delegates to attend to the requirements of the above act, the governor of the Chickasaw Nation shall have the power to fill such vacancies.

SEC. 6. Be it further enacted, That the governor be, and he is hereby, authorized and requested to appoint and commission an additional delegate, who shall be entitled to the same pay as provided above for other delegates. And the said delegates are hereby instructed to report their proceedings to the next session of the legislature.

Approved, November 18, 1865.

WINCHESTER COLBERT, *Governor.*

627 (p. 102:)

AN ACT appointing commissioners, Holmes Colbert and Geo. D. James, to Washington, &c.

SEC. 1. Be it enacted by the legislature of the Chickasaw Nation, That the contract entered into between the Chickasaw commissioners, representing the interests of the Chickasaw people at Washington, District of Columbia, in negotiating the "treaty of 1866," be, and the same is hereby, agreed to and confirmed.

SEC. 2. Be it further enacted, That whereas, in consequence of the announcement made to the Chickasaw commissioners, on the part of the United States, who assembled at Fort Smith, Arkansas, in the month of September, 1865, for the purpose of "negotiating a treaty of peace and friendship" with the southwestern Indians, who have been in alliance with the so-called "Confederate States," that the Chickasaws, with others, had, by reason of said "alliance," made themselves liable to a forfeiture of all rights of every kind, character, and description which had been promised and guaranteed to them by the United States, commissioners were sent by the legislature of the Chickasaw Nation to the city of Washington to negotiate a treaty and enter into any arrangements necessary and proper to secure the Chickasaws in their country, and all other interests, and to effect a permanent settlement of their tribe, as contemplated and provided for in the treaties of 1834 and 1852 between the Chickasaw Nation and the United States;

SEC. 3. And whereas, in consequence of the necessity of send-
628 ing said commissioners to Washington, for the purpose of making a treaty, as aforesaid, the Chickasaw Nation has been subjected to heavy expenses on account of the personal expenses of said commissioners and obligations entered into by them, and other incidental expenses, for the purpose of more effectually accomplishing the object of their mission; and whereas it may, and probably will, be necessary that the Chickasaw

Nation should continue commissioners at Washington City, in order more effectually to secure the permanent settlement of the tribe and other important interests; and whereas, by the provisions of the "treaty of 1852," so much of the national funds as the Chickasaw may require for such purpose is subject to the control of their national council or legislature:

Therefore, be it enacted, That the sum of one hundred thousand dollars be, and the same is hereby, withdrawn from the Chickasaw national fund, held in trust by the United States Treasurer for the Chickasaws. And the President of the United States is hereby requested to cause so much of the said stocks as may be necessary to raise said sum of money to be converted into cash and paid over to the commissioners appointed for the purpose of defraying the obligations incurred, or which may hereafter be incurred, by the Chickasaw commissioners in securing the permanent settlement and other important interests of the tribe, as contemplated under the treaties of 1834 and 1852.

SEC. 4. And whereas the Government of the United States has obligated itself under treaty stipulations to keep the Chickasaw national funds invested in safe and profitable "stocks," and pay the interest thereon to the Chickasaw people annually, and believing that the Government of the United States has failed to do so according to
629 "treaty stipulations," and it is important and necessary to the interest of the Chickasaw people that some persons should represent their interests in Washington, to investigate and find out in what manner the Government of the United States has managed our national funds:

Therefore, be it enacted, That Holmes Colbert and Geo. D. James are hereby appointed and continued as commissioners, with full powers to represent the interest of the Chickasaw people in all things touching their interests and welfare under any treaties existing between the United States and the Chickasaw people.

Approved, November 14, 1867.

C. HARRIS, *Governor.*

(p. 104:)

AN ACT confirming the treaty of 1866.

SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, That whereas a treaty was concluded at Washington City the 28th day of April, 1866, by commissioners duly appointed on the part of the Chickasaws, Choctaws, and the United States Government, which treaty was ratified with amendments by the United States Senate and confirmed by the President: The Chickasaw legislature does hereby give its assent and confirm the said treaty and amendments made by the Senate of the United States.

SEC. 2. Be it further enacted, That the Chickasaw legislature does hereby give its assent to the sectionizing and allotment of the lands in severalty, under the system of the United States, as is provided for in the treaty of April, 1866, and the President of the United
630 States is hereby requested to cause the same to be done as soon as may be practicable.

SEC. 3. Be it further enacted, That the provisions contained in article 3d of the said treaty, giving the Chickasaw legislature the choice of

receiving and appropriating the three hundred thousand dollars therein named for the use and benefit of the Chickasaws, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby declared to be, the *the* unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes. And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirement of the 3d article of the treaty of April 28th, 1866.

Approved, November 9, 1866.

C. HARRIS, *Governor.*

631 (Indorsed:) U. S. Court of Claims. No. 18932. The Choctaw Nation and the Chickasaw Nation v. The United States and the Wichita and Affiliated Bands of Indians. Evidence on behalf of defendant Indians. Exhibit No. 24. Extracts from the laws of the Choctaw and Chickasaw nations. Filed, Court of Claims, Jun. 30, 1896. Josiah M. Vale and Andrew A. Lipscomb, attorneys for said defendants; Philip Walker and William C. Shelley, counsel.